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2 EPW COMMITTEE FIELD BRIEFING TAKEN AT THE
LOUISIANA SUPREME COURT, 400 ROYAL STREET,
3 #4200, NEW ORLEANS, LOUISIANA 70130, ON FRIDAY,
THE 15TH OF AUGUST, 2014.

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6 APPEARANCES:

7
8 SENATOR DAVID VITTER
9 CONGRESSMAN BILL CASSIDY, M.D.
10 STEVEN SERIO
11 BUCK VANDERSTEEN
12 MIKE STRAIN

13
14 REPORTED BY:

15 GRETCHEN HALL, CCR, RPR
PROFESSIONAL SHORTHAND REPORTERS, INC.

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2 SENATOR VITTER:

3 GOOD MORNING. I WANT TO CALL
4 THIS EPW FIELD BRIEFING TO ORDER. AND
5 IT'S ENTITLED TODAY "IMPACTS TO LOUISIANA
6 FAMILIES, FARMERS, AND INFRASTRUCTURE
7 PROJECTS FROM EPA'S PROPOSED WATERS RULE."

8 THANKS TO EVERYBODY FOR BEING
9 HERE THIS MORNING TO DISCUSS A REAL
10 IMPORTANT TOPIC, THE EPA AND THE ARMY
11 CORPS' PROPOSED RULE TO UNILATERALLY
12 EXPAND FEDERAL JURISDICTION UNDER THE
13 CLEAN WATER ACT.

14 AND TO MY RIGHT, YOUR LEFT, WE
15 HAVE SOME POSTERS THAT ILLUSTRATE THAT
16 SIGNIFICANT EXPANSION.

17 THERE'S NO DOUBT, IN FACT, THAT
18 THIS PROPOSED RULE WILL SIGNIFICANTLY
19 INCREASE THE AMOUNT OF PRIVATE PROPERTY
20 SUBJECT TO FEDERAL CONTROL AS, QUOTE,
21 WATERS OF THE UNITED STATES, CLOSED QUOTE,
22 INCLUDING TIMBERLAND, FARMLAND, AND OTHER
23 WATER BODIES.

24 IN ESSENCE, THIS MEANS THAT
25 BUREAUCRATS IN WASHINGTON, D.C. -- WHO

1 ALREADY HAVE TOO MUCH POWER -- ARE
2 ATTEMPTING TO GIVE THEMSELVES EVEN MORE
3 AUTHORITY OVER THE LIVELIHOODS AND
4 BUSINESSES OF INDIVIDUALS AND FAMILIES
5 THROUGHOUT LOUISIANA.

6 AND AGAIN, WE HAVE A MAP TO MY
7 RIGHT, YOUR LEFT, ABOUT LOUISIANA IMPACTS
8 AND EXPANSION.

9 THE PROPOSED RULE'S SWEEPING
10 LANGUAGE IS A DIRECT THREAT TO THE PRIVATE
11 PROPERTY RIGHTS WHICH SERVES AS THE
12 BACKBONE OF OUR LOUISIANA ECONOMY, AND SO
13 I'M VERY CONCERNED THAT THE CONSEQUENCES
14 OF THE OBAMA ADMINISTRATION PROPOSED RULE
15 WILL BE ESPECIALLY SEVERE FOR SMALL
16 BUSINESS, FOR FARMERS, FOR MUNICIPALITIES,
17 AND OTHER LANDOWNERS IN LOUISIANA.

18 OUR STATE IS ON THE VERGE OF A
19 SIGNIFICANT ECONOMIC EXPANSION, THANKS TO
20 THE LEADERSHIP OF MANY FOLKS IN THIS ROOM
21 AND OTHERS AND THE BUSINESSES AND
22 INDIVIDUALS THEY REPRESENT. YET THIS
23 PROGRESS COULD COME TO A SCREECHING HALT
24 IF THE EPA AND THE CORPS ARE PERMITTED TO
25 FOLLOW THE PATH OUTLINED IN THIS PROPOSED

1 RULE.

2 INSTEAD OF LOUISIANIANS DECIDING
3 HOW BEST TO USE THEIR PROPERTY, THE RULE
4 WOULD ALLOW THE FEDERAL GOVERNMENT TO
5 DICTATE MANY LAND USE DECISIONS, WHICH
6 HAVE ALWAYS BEFORE BEEN LOCAL.

7 THE PROPOSED RULE WOULD ALSO GIVE
8 FAR-LEFT ENVIRONMENTAL ACTIVISTS, WITH
9 WHOM THE PRESENT FEDERAL GOVERNMENT OFTEN
10 COLLUDES, THE GREEN LIGHT TO SUE LOUISIANA
11 LANDOWNERS. THIS WOULD MEAN INCREASED
12 REGULATORY COSTS, LESS ECONOMIC
13 DEVELOPMENT, FEWER JOBS FOR LOUISIANIANS,
14 PERPETUAL LITIGATION, EXORBITANT PENALTIES
15 IN MANY CASES.

16 I'M VERY PLEASED TO HAVE
17 CONGRESSMAN BILL CASSIDY JOINING ME THIS
18 MORNING, AND WE'RE ALSO JOINED BY THREE
19 DISTINGUISHED WITNESSES WHO WILL OFFER
20 IMPORTANT TESTIMONY ON THE TROUBLING, YET
21 IMPORTANT, ISSUES SURROUNDING THE EPA AND
22 THE CORPS' PROPOSED RULE.

23 OUR WITNESSES TODAY ARE DR. MIKE
24 STRAIN, COMMISSIONER OF LOUISIANA
25 DEPARTMENT OF AGRICULTURE AND FORESTRY;

1 MR. BUCK VANDERSTEEN, THE EXECUTIVE
2 DIRECTOR OF THE LOUISIANA FORESTRY
3 ASSOCIATION; AND STEVEN SERIO, A PARTNER
4 AT THE LAW FIRM OF FISHMAN AND HAYGOOD AND
5 LOUISIANA GOVERNMENT RELATIONS CHAIR FOR
6 THE INTERNATIONAL COUNCIL OF SHOPPING
7 CENTERS. AND MY THANKS TO OUR THREE
8 DISTINGUISHED WITNESSES TODAY.

9 BEFORE WE HEAR FROM OUR
10 WITNESSES, I WANT TO HIGHLIGHT SOME OF THE
11 CONCERNS I HAVE WITH THIS DRAMATIC
12 EXPANSION OF REGULATORY AUTHORITY. THERE
13 ARE REALLY THREE.

14 FIRST, THE TEXT OF THE PROPOSED
15 RULE DEMONSTRATES THAT THE EPA AND THE
16 CORPS ARE ATTEMPTING A MAJOR TAKEOVER OF
17 STATE AND PRIVATE PROPERTY DETERMINING
18 WHAT HAPPENS ON THOSE LANDS. CERTAIN
19 CATEGORICAL TERMS, SUCH AS TRIBUTARIES,
20 ADJACENT WATERS, NEIGHBORING WATERS, AND
21 FLOODPLAINS, ARE DEFINED SO BROADLY THAT
22 VIRTUALLY ANY WATERBODY COULD FALL UNDER
23 THE REGULATORY AUTHORITY OF THE AGENCY.

24 EVEN IF A WATERBODY DOES NOT FALL
25 UNDER THESE VERY BROAD DEFINITIONS,

1 NON-JURISDICTIONAL WATERBODIES CAN STILL
2 BE CONSIDERED JURISDICTIONAL WHEN, IN
3 COMBINATION WITH SIMILARLY SITUATED
4 WATERS, THERE IS A SIGNIFICANT NEXUS TO A
5 TRADITIONAL NAVIGABLE WATER.

6 SO THIS IS ANOTHER CATCH-ALL
7 PROVISION. COMBINED WITH THE AGENCY'S
8 BROAD DEFINITIONAL TERMS, THIS WILL REALLY
9 PROVIDE NO REAL LIMIT TO FEDERAL AUTHORITY
10 UNDER THE CLEAN WATER ACT.

11 POINT NUMBER TWO, SECOND, THE
12 AGENCIES THAT WILL BE IN CHARGE OF
13 ENFORCING THE PROPOSED RULE HAVE SHOWN
14 THAT THEY DO NOT UNDERSTAND THE LANGUAGE
15 THAT THEY ARE DRAFTING OR THE SIGNIFICANT
16 COSTS OF THIS MAJOR EXPANSION OF THE CLEAN
17 WATER ACT.

18 EARLIER THIS MONTH, OUR COMMITTEE
19 COMPLETED A FACT CHECK ON SEVERAL EPA
20 CLAIMS ABOUT THIS PROPOSED RULE. WHEN
21 EXAMINING THE TEXT OF THE PROPOSED RULE,
22 IT'S EASY TO SEE HOW EPA'S CLAIMS ARE JUST
23 COMPLETELY FALSE IN MANY IMPORTANT CASES.

24 FOR EXAMPLE, EPA HAS SAID THAT
25 THE PROPOSED RULE DOES NOT REGULATE NEW

1 TYPES OF DITCHES.

2 IN FACT, THE PROPOSED RULE
3 EXPLICITLY INCLUDES DITCHES FOR THE FIRST
4 TIME EVER, UNLESS THEY FALL WITHIN ONE OF
5 TWO NARROW EXCEPTIONS TO FEDERAL
6 JURISDICTION. MANY DITCHES THROUGHOUT THE
7 COUNTRY WILL BE UNABLE TO MEET THE RULE'S
8 LIMITED EXEMPTION PROVISION AND, THUS,
9 WILL BE SUBJECT TO THE CLEAN WATER ACT FOR
10 THE FIRST TIME.

11 LIKEWISE, THE ARMY CORPS HAS
12 ATTEMPTED TO ASSURE US THAT, QUOTE, WHEN
13 PRIVATELY-OWNED AQUATIC AREAS ARE SUBJECT
14 TO CLEAN WATER ACT JURISDICTION, THAT
15 RESULTS IN LITTLE OR NO INTERFERENCE
16 WITH -- THE RESULT WOULD BE LITTLE OR NO
17 INTERFERENCE WITH THE LANDOWNER'S USE OF
18 LAND, CLOSED QUOTE.

19 NOW, THIS COMES FROM THE SAME
20 AGENCY WHOSE DESIGNATION OF LAND IN
21 ASSUMPTION PARISH HAS PREVENTED THE
22 DEVELOPMENT OF PRIVATELY-OWNED LAND THERE,
23 NOT TO MENTION THE GROWING PROBLEMS WITH
24 THE CORPS' MODIFIED CHARLESTON METHOD AND
25 OTHER MITIGATION POLICIES, WHICH MORE AND

1 MORE APPEAR TO BE A MEANS FOR FEDERAL
2 EXTORTION OF PRIVATE LANDOWNERS.

3 THESE MISGUIDED CLAIMS SUGGEST TO
4 ME THAT THE EPA AND THE CORPS EITHER DON'T
5 UNDERSTAND THE CLEAN WATER ACT AND THE
6 LANGUAGE THEY DRAFTED TO EXPAND IT OR
7 THEY'RE INTENTIONALLY TRYING TO MISLEAD
8 THE PUBLIC ABOUT THE EFFECTS OF THIS RULE.

9 THIRD, AND FINALLY, I'M VERY
10 CONCERNED THAT THE PROPOSED RULE WILL LEAD
11 TO FAR-LEFT ENVIRONMENTAL GROUPS SUING
12 HOMEOWNERS AND SMALL BUSINESSES FAR MORE
13 THAN EVEN THEY DO NOW HERE IN LOUISIANA
14 FOR SIMPLY ATTEMPTING TO IMPROVE THEIR
15 PRIVATE PROPERTY.

16 HOW MANY HOMEOWNERS, SMALL
17 BUSINESSES, AND FARMERS WOULD BE EXEMPT
18 FROM FEDERAL REGULATION UNDER THE EPA'S
19 PROPOSED RULE? IT'S VERY DIFFICULT TO SAY
20 WITH ANY CERTAINTY. THESE POSTERS GO TO
21 THAT POINT, AND THAT'S A BIG PART OF THESE
22 CONCERNS.

23 THERE ARE ALREADY REPORTS OF
24 ENVIRONMENTAL GROUPS USING LANGUAGE
25 CONTAINED IN THE PROPOSED RULE TO SUE AND

1 STOP HOME BUILDERS AND OTHER BUSINESSES
2 FROM PROVIDING HOUSING AND JOBS FOR THE
3 AMERICAN PEOPLE.

4 IF FINALIZED, FEW SECTORS OF OUR
5 LOUISIANA ECONOMY WILL BE IMMUNE FROM
6 THESE ENVIRONMENTAL ACTIVISTS' LAWSUITS
7 AND OTHER ACTIONS TO EXPLOIT, FULLY, THE
8 RULE.

9 IT'S ALSO DISCONCERTING THAT, IN
10 CONJUNCTION WITH THE "PROPOSED WATERS OF
11 THE UNITED STATES" RULE, THE EPA AND THE
12 CORPS ISSUED AN INTERPRETIVE CLEAN WATER
13 ACT RULE THAT WILL MAKE IT MORE DIFFICULT
14 FOR FARMERS TO ENGAGE IN RECOGNIZED
15 CONSERVATION PRACTICES.

16 WITH ALL OF THESE CONCERNS IN
17 MIND, CONGRESS CAN AND SHOULD STOP THIS
18 FEDERAL OVERREACH. THAT'S WHY I'M PROUD
19 TO BE A LEAD CO-SPONSOR OF SENATOR JOHN
20 BARRASSO'S PROTECTING WATER AND PROPERTY
21 RIGHTS ACT OF 2014, S. 2496, WHICH WOULD
22 PREVENT THE OBAMA ADMINISTRATION FROM
23 FINALIZING THIS OR ANY SIMILAR RULE.

24 EPA ADMINISTRATOR MCCARTHY
25 RECENTLY MADE THE PUBLIC STATEMENT THAT,

1 QUOTE, I HAVE NEVER PROPOSED ANYTHING THAT
2 I THOUGHT WOULD BE SO WELL-RECEIVED AS
3 THIS THAT HAS FALLEN TOTALLY FLAT ON ITS
4 FACE, CLOSED QUOTE.

5 AS RANKING MEMBER OF THE EPW
6 COMMITTEE, I'M COMMITTED TO PROTECTING
7 LOUISIANIANS AND PRIVATE PROPERTY OWNERS
8 THROUGHOUT THE COUNTRY. I'LL DO
9 EVERYTHING I CAN TO STOP THIS FEDERAL
10 OVERREACH.

11 I WANT TO THANK, AGAIN, MY HOUSE
12 COLLEAGUE, DR. BILL CASSIDY, FOR JOINING
13 US, AND AT THIS POINT I'LL TURN IT OVER TO
14 DR. CASSIDY.

15 CONGRESSMAN CASSIDY:

16 THANK YOU, SENATOR VITTER, FOR
17 HOLDING THIS IMPORTANT FIELD HEARING
18 DRAWING ATTENTION TO THE EPA'S ONSLAUGHT
19 OF DESTRUCTIVE REGULATIONS THAT CAN KILL
20 JOBS, RAISE THE COST OF ENERGY, AND CHANGE
21 HOW WE LIVE OUR DAILY LIVES.

22 THE CLEAN WATER ACT OF 1972
23 CLEARLY STATES UP FRONT IT IS THE, QUOTE,
24 POLICY OF CONGRESS TO RECOGNIZE, PRESERVE,
25 AND PROTECT THE PRIMARY RESPONSIBILITIES

1 AND RIGHTS OF STATES TO PREVENT, REDUCE,
2 AND ELIMINATE POLLUTION.

3 NOW, DESPITE THIS PARTNERSHIP
4 ESTABLISHED UNDER THE CLEAN WATER ACT AND
5 THE LIMITS TO FEDERAL AUTHORITY, THE OBAMA
6 ADMINISTRATION AND SOME LAWMAKERS IN
7 RECENT YEARS HAVE SOUGHT TO, QUOTE,
8 CLARIFY THE SCOPE OF FEDERAL JURISDICTION
9 UNDER THE CLEAN WATER ACT IN A MANNER THAT
10 WOULD EXPAND THE FEDERAL GOVERNMENT'S
11 REGULATORY POWER; FRANKLY, A FEDERAL POWER
12 GRAB.

13 CHANGING THE SCOPE OF THE LAW,
14 INCLUDING THE CLEAN WATER ACT, IS SOLELY
15 THE RESPONSIBILITY OF CONGRESS; YET THE
16 OBAMA ADMINISTRATION HAS ONCE MORE DECIDED
17 TO BYPASS LEGISLATIVE PROCESS AND TO
18 ACHIEVE AN EXPANSIONIST AGENDA THROUGH
19 AGENCY GUIDANCE AND EXECUTIVE BRANCH
20 REGULATORY PROCESS.

21 AS SENATOR VITTER MENTIONED, THE
22 PROPOSED RULE PUT FORTH BY THE CORPS AND
23 THE EPA MANIPULATES AND MISCONSTRUES TWO
24 RELEVANT SUPREME COURT RULINGS,
25 EFFECTIVELY TURNING THOSE CASES THAT LIMIT

1 THE CLEAN WATER ACT JURISDICTION INTO A
2 JUSTIFICATION FOR THE AGENCIES TO BROADEN
3 THEIR AUTHORITY OVER ALL WATERS.

4 THIS EXPANSION OF FEDERAL
5 REGULATORY POWER COULD HAVE SERIOUS
6 CONSEQUENCES FOR THE NATION'S ECONOMY,
7 THREATEN JOBS, INVITE COSTLY LITIGATION,
8 AND SIGNIFICANTLY RESTRICT THE ABILITY OF
9 LANDOWNERS TO MAKE DECISIONS ABOUT THEIR
10 PROPERTY, AND THE RIGHTS OF STATE AND
11 LOCAL GOVERNMENTS TO PLAN FOR THEIR OWN
12 DEVELOPMENT.

13 NOW, THESE ACTIONS ARE ANOTHER
14 EXAMPLE OF A DISTURBING PATTERN OF AN
15 IMPERIAL PRESIDENCY USING BRUTE FORCE AND
16 EXECUTIVE ACTION WHILE IGNORING CONGRESS.

17 I JOIN 231 OF MY COLLEAGUES IN
18 URGING THE EPA AND CORPS TO WITHDRAW THEIR
19 PROPOSED RULE AND CO-SPONSOR LEGISLATION
20 PROHIBITING THE EPA AND THE CORPS FROM
21 DEVELOPING, FINALIZING, ADOPTING,
22 IMPLEMENTING, APPLYING, ADMINISTERING,
23 ENFORCING -- OR ANY OTHER ADVERB -- ITS
24 WATERS OF THE U.S. RULE.

25 THE HOUSE INSERTED LANGUAGE IN AN

1 APPROPRIATIONS BILL THAT PROHIBITS FUNDS
2 FROM BEING USED TO IMPLEMENT AND ENFORCE
3 THIS RULE, BUT FRANKLY -- AND SENATOR
4 VITTER I THINK WILL CONCUR -- I DOUBT THAT
5 HARRY REID OR HIS SENATORS WHO SUPPORT HIM
6 WOULD EVER ALLOW A VOTE ON SUCH
7 LEGISLATION.

8 I'VE NOTED THAT FEDERAL
9 REGULATION IS A LITTLE BIT LIKE KUDZU. IF
10 YOU LET IT GET STARTED, IT WILL NOT STOP,
11 AND THE PLACE TO STOP IT IS TO UPROOT IT
12 WHEN IT IS YOUNG. RIGHT NOW THIS IS, IF
13 YOU WILL, KUDZU THAT IS GOING TO GROW AND
14 CHOKE OUR ECONOMY.

15 THIS IS WHY HEARINGS LIKE THIS
16 ARE SO IMPORTANT, TO PROVIDE A PLATFORM,
17 TO PUT ON THE RECORD, TO HEAR FIRSTHAND
18 FROM YOU THE IMPACTS THAT THIS WILL HAVE
19 UPON LOUISIANA.

20 THANK YOU FOR JOINING US. AGAIN,
21 SENATOR VITTER, THANK YOU FOR ALLOWING ME
22 TO JOIN.

23 SENATOR VITTER:

24 THANK YOU, DR. CASSIDY.

25 NOW WE'LL TURN TO OUR THREE GREAT

1 WITNESSES.

2 FIRST, WE'LL HEAR FROM MR. BUCK
3 VANDERSTEEN. HE'S EXECUTIVE DIRECTOR OF
4 THE LOUISIANA FORESTRY ASSOCIATION, A
5 PRIVATE TRADE ORGANIZATION REPRESENTING
6 LANDOWNERS, LOGGERS, AND THE FOREST
7 INDUSTRY.

8 MR. VANDERSTEEN IS A FORESTER AND
9 TREE FARMER HIMSELF. HE HAS A FORESTRY
10 DEGREE FROM THE UNIVERSITY OF
11 MASSACHUSETTS, AND HE RECEIVED HIS MBA
12 FROM LOUISIANA TECH, AND IS A GRADUATE OF
13 OKLAHOMA UNIVERSITY'S INSTITUTE OF
14 ORGANIZATIONAL MANAGEMENT.

15 THANK YOU, SIR. GO AHEAD.

16 MR. VANDERSTEEN:

17 THANK YOU, SENATOR VITTER.
18 APPRECIATE VERY MUCH YOUR INTEREST IN
19 HOLDING THIS HEARING -- OR THIS BRIEFING
20 ON THE ENVIRONMENTAL AND PUBLIC WORKS
21 EFFORT.

22 CONGRESSMAN CASSIDY, THANK YOU
23 ALSO FOR YOUR PARTICIPATION HERE TODAY.

24 YOU HAVE MY WRITTEN TESTIMONY,
25 BUT I'D LIKE TO SPEAK FROM THE HEART A

1 LITTLE BIT. MOST FORESTLAND IN LOUISIANA
2 IS PRIVATELY OWNED. HALF THE STATE IS
3 COVERED IN TREES.

4 AND SINCE THE EARLY 1970S, WHEN
5 THE CLEAN WATER ACT WAS FIRST DEVELOPED,
6 WE WORKED WITH OUR PARTNERS IN STATE
7 DEPARTMENT OF ENVIRONMENTAL QUALITY, STATE
8 DEPARTMENT OF AGRICULTURE AND FORESTRY,
9 PUTTING TOGETHER MODELS FOR TRAINING IN
10 COMPLIANCE WITH BEST MANAGEMENT PRACTICES
11 AND PROTECTING THE WATERS OF LOUISIANA,
12 AND THOUSANDS OF PEOPLE HAVE BEEN TRAINED
13 OVER THE COURSE OF THE YEARS.

14 IF YOU LOOK AT THE RESEARCH, THE
15 AMOUNT OF POLLUTION COMING FROM OUR FOREST
16 IS -- THEY CALL IT DE MINIMIS. SO WE'VE
17 REALLY HAD A LOT OF GOOD THINGS HAPPENING,
18 AND PEOPLE HAVE BEEN TRAINED.

19 THE CONCERN I HAVE WITH THE NEW
20 PROPOSED RULE IS THAT IT UPSETS THE APPLE
21 CART. IT CREATES UNCERTAINTY. PEOPLE
22 AREN'T COMPLETELY FAMILIAR WITH HOW ALL
23 THIS WILL PLAY INTO THEIR FOREST
24 MANAGEMENT ACTIVITIES. AND BEING A
25 \$4 BILLION ECONOMIC IMPACT TO LOUISIANA,

1 THIS HAS SIGNIFICANT RECOURSE FOR JOBS,
2 FOR STATE FINANCING, AND ALL OF THE THINGS
3 THAT ARE IMPORTANT.

4 NOW, THERE WILL BE SOME PEOPLE
5 THAT SAY UNDER THIS PROPOSED RULE THAT THE
6 SILVICULTURAL EXEMPTION UNDER SECTION 404
7 STILL APPLIES. THAT IS TRUE, EXCEPT FOR
8 THE FACT THAT EPA ALSO PROPOSES AN
9 INTERPRETIVE RULE OF 56 PROPOSALS THAT
10 THEY SAY WOULD BE NORMAL FORESTRY AND
11 FARMING ACTIVITY, IMPLYING THAT EVERYTHING
12 ELSE THAT IS OUT THERE MIGHT REQUIRE A
13 CLEAN WATER ACT PERMIT.

14 SO SUDDENLY, THE ENVIRONMENT HAS
15 BEEN, ALL FORESTRY/FARMING ACTIVITIES ARE
16 EXEMPT AS NORMAL SILVICULTURE,
17 AGRICULTURAL ACTIVITIES, TO NOW ONLY 56
18 WOULD BE CONSIDERED NORMAL FORESTRY
19 ACTIVITIES.

20 AND TO MAKE MATTERS WORSE, EPA
21 PROPOSES THAT OUR NATURAL RESOURCES
22 CONSERVATION SERVICE, ONE THAT IS VERY
23 DEPENDENT AND VERY HELPFUL IN CONSERVATION
24 ACTIVITIES, NOW WILL BECOME THE REGULATOR
25 OF THOSE 56 INTERPRETIVE RULES, MAKING OUR

1 PARTNERS IN CONSERVATION SUSPECT OF, HAVE
2 THEY BECOME A QUASI ENVIRONMENTAL
3 REGULATORY AGENCY AND NOT A PARTNER IN
4 CONSERVATION.

5 THE UNCERTAINTY IS THERE. IF THE
6 EPA'S GOAL IS REALLY CLEAN WATER, THEY
7 OUGHT TO LOOK AT WHAT HAS BEEN DONE IN OUR
8 FARMING AND FORESTRY ACTIVITIES AND DO
9 AWAY WITH THINGS THAT CREATE UNCERTAINTY,
10 TO CREATE PROBLEMS FOR, AS YOU MENTIONED,
11 SENATOR, THE OPPORTUNITY FOR PEOPLE THAT
12 DON'T LIKE FORESTRY, THAT DON'T LIKE THE
13 PRODUCTION OF CROPS, TO OFFER CITIZEN
14 ENVIRONMENTAL SUITS SAYING THAT, WELL,
15 THAT'S NOT A NORMAL ACTIVITY, AND
16 THEREFORE, REQUIRES A PERMIT.

17 AND AS YOU KNOW, WHEN YOU'RE
18 DEALING WITH THE FEDERAL GOVERNMENT,
19 OBTAINING A PERMIT, YOU COULD LOSE
20 MARKETS, YOU COULD LOSE OPPORTUNITIES; AND
21 WORST, INSTEAD OF OUR FOREST COVERING HALF
22 THE STATE OF LOUISIANA, THOSE PRIVATE
23 LANDOWNERS, THOSE FAMILY FOREST LANDOWNERS
24 THAT ARE OUT THERE, MAY DECIDE THAT THAT
25 LAND IS BEST USED FOR SOMETHING ELSE.

1 I'M NOT OPPOSED TO SHOPPING
2 CENTERS, AS MY COLLEAGUE ON MY RIGHT IS
3 GOING TO BE TALKING ABOUT THAT, BUT IT'S
4 HARD TO GROW A TREE IN CONCRETE.

5 SENATOR VITTER:

6 OKAY. THANK YOU, SIR.

7 NEXT WE'LL HEAR FROM DR. MIKE
8 STRAIN. DR. STRAIN WAS ELECTED
9 COMMISSIONER OF THE LOUISIANA DEPARTMENT
10 OF AGRICULTURE AND FORESTRY IN 2007 AND
11 WAS RE-ELECTED IN 2011.

12 HIS BACKGROUND IS IN VETERINARY
13 MEDICINE, AND HE'S SERVED AS A VOLUNTEER
14 IN MANY CIVIC AND PROFESSIONAL
15 ORGANIZATIONS, PARTICULARLY IN ST. TAMMANY
16 PARISH, WHILE MAINTAINING MEMBERSHIP IN
17 SEVERAL AGRICULTURAL ORGANIZATIONS,
18 INCLUDING LOUISIANA FARM BUREAU, LOUISIANA
19 CATTLEMEN'S ASSOCIATION, LOUISIANA
20 VETERINARY MEDICAL ASSOCIATION, AND
21 OTHERS.

22 DR. STRAIN ALSO SERVED IN THE
23 LOUISIANA LEGISLATURE AND CHAIRED THE
24 LOUISIANA RURAL CAUCUS, THE LARGEST
25 LEGISLATIVE CAUCUS IN OUR LEGISLATURE.

1 WELCOME, MR. COMMISSIONER.

2 DR. STRAIN:

3 THANK YOU. GOOD MORNING, RANKING
4 MEMBER VITTER, CONGRESSMAN CASSIDY, LADIES
5 AND GENTLEMEN.

6 FIRST OF ALL, THANK YOU FOR
7 HOLDING THIS HEARING. AS YOU HAVE STATED,
8 THIS IS VERY CRITICAL, AND I THINK THE
9 MOST CRITICAL PART IS THE UNKNOWN AND HOW
10 IT IS GOING TO AFFECT THE ECONOMIC
11 DEVELOPMENT AND AGRICULTURE IN THE FUTURE.

12 I'M TESTIFYING TODAY ON BEHALF OF
13 THE LOUISIANA DEPARTMENT OF AG AND
14 FORESTRY. I'M ALSO A MEMBER AND OFFICER
15 OF THE NATIONAL ASSOCIATION OF STATE
16 DEPARTMENTS OF AGRICULTURE REPRESENTING
17 THE ENTIRE UNITED STATES AND ITS
18 TERRITORIES.

19 AGRICULTURE IS THE LARGEST SECTOR
20 OF OUR STATE'S ECONOMY, CURRENTLY VALUED
21 AT OVER \$12 BILLION, 10 PERCENT OF OUR
22 WORKFORCE, 245,000 JOBS. SINCE 2007, IT
23 HAS GROWN FROM 5.9 BILLION TO \$12 BILLION,
24 ONE OF THE FASTEST GROWING SECTORS.

25 WATER IS CRITICAL TO THE

1 PRODUCTION OF OUR CROPS, LIVESTOCKS,
2 TREES, AND FISHERIES. OUR FARMERS AND
3 RANCHERS AND LANDOWNERS ARE THE TRUE
4 ENVIRONMENTAL STEWARDS.

5 IF YOU LOOK AT -- SINCE 1985,
6 WE'VE DECREASED RUNOFF BY MORE THAN
7 60 PERCENT. WHEN YOU START LOOKING AT
8 WHAT THIS COULD DO, OUR MAJOR CONCERN IS
9 THAT THE INITIAL CLEAN WATER ACT OF 1972
10 WAS LIMITED TO NAVIGABLE BODIES OF THE
11 U.S.

12 IN 1972 IT WAS CLEAR THAT UNDER
13 THE CLEAN WATER ACT THERE WOULD BE PRIMARY
14 STATE AUTHORITY -- PRIMARY STATE
15 AUTHORITY, STATE SOVEREIGNTY -- IN THESE
16 ISSUES.

17 WHEN YOU LOOK AT, NOW, THE
18 REDEFINITION TO INCLUDE TRIBUTARIES,
19 SIGNIFICANT NEXUS, DITCHES, IT IS A CLEAR
20 EXPANSION OF FEDERAL AUTHORITY INTO AREAS
21 WHERE, EVEN BY THE SUPREME COURT'S MANDATE
22 IMPOSING LIMITS ON FEDERAL JURISDICTION,
23 AND THE INITIAL INTENT OF THE CLEAN WATER
24 ACT MARKEDLY EXPANDS THAT AUTHORITY -- THE
25 TERM "SIGNIFICANT NEXUS," AND OTHER BODIES

1 AS APPROPRIATE.

2 AND WHEN YOU START LOOKING AT
3 SOME OF THE ISSUES, YOU HAVE A NAVIGABLE
4 BODY OF WATER, YOU HAVE AN ADJACENT
5 WETLAND, YOU NOW HAVE A SIGNIFICANT NEXUS.

6 YOU ALSO HAVE DEFINITIONS THAT A
7 BODY OF WATER THAT IS SEPARATED BY A
8 MAN-MADE OBSTRUCTION -- LEVEE, ROAD,
9 WHATEVER -- IF IT IS ADJACENT TO A BODY
10 THAT IS UNDER THE JURISDICTION OF THE
11 CLEAN WATER ACT, NOW IT, TOO, IS SUBJECT
12 TO THE CLEAN WATER ACT.

13 WE MET WITH A NUMBER OF OUR
14 PRODUCERS. WE HELD TWO LISTENING
15 SESSIONS, OVER 250 PRODUCERS, AND OF GREAT
16 CONCERN WAS THE FACT THAT, YES, WE ARE
17 BEING TOLD THAT 56 NORMAL PRACTICES OF THE
18 NRCS WILL BE EXEMPT. FURTHERMORE, NORMAL
19 AGRICULTURAL AND SILVICULTURAL PRACTICES
20 WILL BE EXEMPT.

21 WHEN YOU LOOK TO WHERE WE ARE AT,
22 WHERE WE ARE GOING TO BE, WE HAVE TO NOW
23 DOUBLE, AND IN THE UNITED STATES TRIPLE,
24 AGRICULTURAL PRODUCTION IN THE NEXT 35 TO
25 40 YEARS -- DOUBLE OR TRIPLE. THESE

1 NORMAL CONSERVATION PRACTICES, NORMAL
2 FARMING PRACTICES, ARE NOW MOVING FORWARD
3 AND CHANGING AND IMPROVING AT LIGHT SPEED.

4 WE'VE SHOWN THAT WE'VE DOUBLED
5 OUR ECONOMY NOW IN THE LAST EIGHT YEARS
6 AND THAT WE'RE GOING TO TRIPLE THAT IN THE
7 NEXT 35. BUT AT THE SAME TIME, YOU AND I
8 BOTH KNOW WHAT IT TAKES TO GET A
9 SECTION 404 PERMIT, AND WHEN YOU TALK
10 ABOUT AGRICULTURE, 85 PERCENT OF THE
11 SURFACE AREA OF LOUISIANA IS IN
12 AGRICULTURE AND IN AQUACULTURE.

13 OUR FARMERS ARE VERY CONCERNED
14 ABOUT WHAT WE DO NOT KNOW, THAT AS WE
15 CHANGE OUR PRACTICES TO MEET THE GREATER
16 NEEDS AND BECOME MORE EFFICIENT, THEN
17 THOSE PRACTICES WOULD BE SUBJECT TO CLEAN
18 WATER ACT, A SECTION 404 PERMIT. THAT
19 TAKES TIME AND TAKES MONEY.

20 ALSO, WE'VE BEEN VERY PROACTIVE
21 IN ADDRESSING OUR WATER QUALITY ISSUES
22 USING SCIENTIFICALLY-BASED BEST MANAGEMENT
23 PRACTICES, THE LOUISIANA MASTER FARMER
24 PROGRAM; AND ALSO, WHICH HAS BECOME A
25 MODEL IN THE SOUTH, IS THROUGH OUR

1 NUTRIENT MANAGEMENT INITIATIVES, WHERE WE
2 ARE, THROUGH VOLUNTARY PRACTICES, WORKING
3 WITH AGRICULTURE, INDUSTRY, SCIENCE, AND
4 EVERYONE TOGETHER, WHERE WE ARE DEVELOPING
5 NEW TECHNOLOGIES TO SIGNIFICANTLY DECREASE
6 RUNOFF, AND SUCH THAT IT BECOMES MORE
7 PROFITABLE TO THE LANDOWNER.

8 WHAT I MEAN BY THAT IS -- WHAT
9 DOES IT TAKE TO GROW A CROP? WATER,
10 NITROGEN, PHOSPHORUS, SOIL, AND A LOT OF
11 HARD WORK, SUNSHINE AND RAIN. BUT WHEN
12 YOU LOOK AT WHAT WE'RE HAVING TO DO, THE
13 OTHER PART THAT'S NOT REALLY BEEN IN THIS
14 CONVERSATION IS THE ISSUE OF TOTAL MAXIMUM
15 DAILY LOADS, TMDLS.

16 AND YOU HAVE SEEN THAT IN THE
17 UNITED STATES COURT, HERE IN NEW ORLEANS,
18 IN SEPTEMBER OF LAST YEAR. IT BASICALLY
19 TOLD THE EPA THAT EITHER YOU ESTABLISH
20 TMDLS OR YOU HAVE TO PROVE THAT THE STATES
21 ARE DOING EVERYTHING IN THEIR POWERS TO DO
22 THAT.

23 WELL, TMDLS, THOSE ARE THE THINGS
24 THAT ARE BEING ANALYZED IN THIS RUNOFF
25 THAT IS IN THE DITCHES AND THE SIGNIFICANT

1 NEXUS AND THE BODIES OF THE WATER OF THE
2 U.S.

3 I HAVE DOCUMENTS THAT I WILL
4 PLACE INTO THE RECORD THAT SHOWS IF THERE
5 IS AN ARBITRARY PLACEMENT OF TMDLS ON
6 LOUISIANA BODIES OF WATER, THAT JUST
7 RESTRICTING NITROGEN AND PHOSPHORUS 10 TO
8 30 PERCENT TO REACH THOSE TMDLS COULD COST
9 \$350 MILLION A YEAR TO OUR FARMERS.

10 WE'RE ACTIVELY WORKING TO ADDRESS
11 THE CONCERNS FOR RUNOFF, AND ALSO WORKING
12 INTENSELY BECAUSE WE KNOW THAT WETLANDS
13 ARE THE KEY TO THE SURVIVAL OF THIS STATE.

14 WHEN YOU LOOK AT WHERE WE ARE AT,
15 THE UNCERTAINTY OF WHAT WILL BE IN A BODY
16 OF WATER, THE UNCERTAINTY OF WHETHER OR
17 NOT OUR RICE FARMS ARE GOING TO CONTINUE
18 TO BE ABLE TO USE -- TO FLOOD THEIR
19 FIELDS, DRAIN THEM, AND REFLOOD THEM FOR
20 SECONDARY CROPS, FOR WILDLIFE, FOR
21 CRAWFISH, AND THAT, BY CONNECTION, FOR THE
22 SIGNIFICANT NEXUS.

23 NOW IT'S EVERY DITCH -- NOT A
24 NATURAL BODY OF WATER -- EVERY DITCH NOW
25 GOING TO BE UNDER THE JURISDICTION OF THE

1 CLEAN WATER ACT.

2 IT IS ABOUT INCREASING FEDERAL
3 AUTHORITY TODAY. IT IS ABOUT UNCERTAINTY
4 FOR AGRICULTURE, FOREST, AND AQUACULTURE
5 TOMORROW. BUT IT IS ALSO ABOUT THE FACT
6 THAT FARMERS NOW ARE GOING TO BE LOOKING
7 TO USE THE 56 ACCEPTED CONSERVATION
8 TECHNOLOGIES AND MAY NOT LOOK TO ADVANCE
9 TO NEW TECHNOLOGIES, BECAUSE THEY ARE NOW
10 NOT EXEMPT.

11 IF THIS DOES MOVE FORWARD, WE'RE
12 ASKING THAT THE STATES -- THE INDIVIDUAL
13 STATES HAVE THE AUTHORITY TO DETERMINE
14 WHAT IS A NORMAL AGRICULTURAL PRACTICE IN
15 THAT STATE AND WHAT IS AN ACCEPTED
16 EXEMPTION, IF THAT IS COMING TO PASS.

17 BUT WE MUST BE VERY CAREFUL,
18 BECAUSE AS WE HAVE THE GREATEST
19 OPPORTUNITY IN HISTORY TO EXPAND
20 PRODUCTION THAT IS NEEDED FOR A GROWING
21 WORLD THAT WE HAVE TO FEED AND WE HAVE THE
22 GREATEST ECONOMIC OPPORTUNITIES THIS STATE
23 HAS EVER SEEN AHEAD OF US, WE CANNOT
24 AFFORD TO HAVE GROWING FEDERAL REGULATION.

25 STOP THAT.

1 THANK YOU.

2 SENATOR VITTER:

3 THANK YOU VERY MUCH, DR. STRAIN.

4 AND OUR THIRD AND FINAL WITNESS
5 IS MR. STEVEN SERIO. HE IS AN ATTORNEY
6 FOR COMMERCIAL DEVELOPERS AND RETAILERS,
7 AND HIS PRACTICE FOCUS IS ON REAL ESTATE
8 DEVELOPMENT, INCLUDING ACQUISITIONS AND
9 SALES, FINANCING, LEASING, AND CONDOMINIUM
10 DEVELOPMENT.

11 STEVEN IS A MEMBER OF THE
12 INTERNATIONAL COUNCIL OF SHOPPING CENTERS
13 AND IS CURRENTLY SERVING AS THE GOVERNMENT
14 RELATIONS CHAIR FOR THE STATE OF
15 LOUISIANA.

16 WELCOME.

17 MR. SERIO:

18 SENATOR VITTER, CONGRESSMAN
19 CASSIDY, ON BEHALF OF THE INTERNATIONAL
20 COUNCIL OF SHOPPING CENTERS, I WOULD LIKE
21 TO EXPRESS OUR THANKS TO YOU FOR THE
22 OPPORTUNITY TO PARTICIPATE IN THIS
23 LISTENING SESSION.

24 WE THANK YOU FOR CONSULTING WITH
25 THE RETAIL REAL ESTATE INDUSTRY TO DISCUSS

1 HOW TO BEST BALANCE THE NEEDS OF OUR
2 NATION'S PRECIOUS ENVIRONMENT WITH THE
3 DYNAMICS OF ITS ECONOMIC RECOVERY.

4 FOUNDED IN 1957, ICSC IS THE
5 PREMIER GLOBAL TRADE ASSOCIATION OF THE
6 SHOPPING CENTER INDUSTRY. ITS MORE THAN
7 63,000 MEMBERS IN OVER 100 COUNTRIES
8 INCLUDE SHOPPING CENTER OWNERS,
9 DEVELOPERS, MANAGERS, INVESTORS,
10 RETAILERS, BROKERS, AS WELL AS PUBLIC
11 OFFICIALS.

12 SINCE ITS INCEPTION, THE CLEAN
13 WATER ACT HAS HELPED COMMERCIAL REAL
14 ESTATE DEVELOPERS AND THEIR TENANTS MAKE
15 SIGNIFICANT STRIDES IN IMPROVING THE
16 QUALITY OF WATER RESOURCES WHILE
17 CONTINUING TO GROW THE ECONOMY.

18 AS ENVIRONMENTAL STEWARDS,
19 SHOPPING CENTER DEVELOPERS CONSTRUCT VITAL
20 BUSINESS DISTRICTS AND HELP CREATE
21 THRIVING COMMUNITIES WHILE ENHANCING OUR
22 NATURAL RESOURCES.

23 HOWEVER, THE EXPANSION OF
24 JURISDICTION AND THE UNCERTAINTY CREATED
25 BY THIS PROPOSED RULE WILL ADVERSELY

1 AFFECT PROJECT SCHEDULING, TIMING, AND
2 COSTS.

3 REGULATORY COMPLIANCE COSTS ARE
4 INCURRED AT THE OUTSET OF A PROJECT, LONG
5 BEFORE THE START DATE OF A LEASED RETAIL
6 SPACE AND WELL BEFORE THE DEVELOPER
7 RECEIVES ANY INCOME.

8 AS AN INDUSTRY SUBJECT TO
9 NIMBYISM, LITIGATION IS AN EVEN MORE
10 LIKELY RESULT UNDER THE PROPOSED
11 REGULATIONS THAN IT IS NOW, AND THE
12 INCREASED LITIGATION WILL LEAVE GOOD
13 DEVELOPERS AND BUSINESSES HOLDING THE BAG.

14 COMMERCIAL DEVELOPERS, ALREADY
15 CRIPPLED BY THE ECONOMIC DOWNTURN, CANNOT
16 DEPEND UPON THE HOPE OF IMPROVED MARKET
17 CONDITIONS IN ORDER TO ABSORB RISING COSTS
18 ASSOCIATED WITH OVERREGULATION AND TO
19 COMBAT LITIGATION THAT IS NOT THEIR DOING.

20 AS AN ATTORNEY FOR COMMERCIAL
21 DEVELOPERS AND RETAILERS, I HAVE SEEN
22 PROJECTS DERAILED DUE TO OVERREGULATION.

23 IN 2012, ROUSES SUPERMARKETS,
24 LOUISIANA'S SECOND LARGEST EMPLOYER, WAS
25 SLATED TO CONSTRUCT A NEW STORE AT THE

1 INTERSECTION OF LOUISIANA HIGHWAY 59 AND
2 INTERSTATE 12, BUT THE DEAL FELL APART
3 BECAUSE THE CORPS PERMITTING OFFICE
4 APPLIED AN OVERLY RESTRICTIVE METHOD TO
5 CALCULATING WETLANDS MITIGATION CREDITS
6 AND EVEN RAISED QUESTIONS ABOUT THE
7 PROJECT'S ECONOMIC VIABILITY, WHICH I
8 THINK MOST OF US WOULD AGREE DOES NOT FALL
9 UNDER THEIR PURVIEW.

10 IN THIS INSTANCE, THE APPLICATION
11 BY THE CORPS OF THE MODIFIED CHARLESTON
12 METHOD RENDERED THE PROJECT ECONOMICALLY
13 UNFEASIBLE. THIS NEWLY APPLIED METHOD
14 RESULTED IN A PROJECT COST THAT WAS THREE
15 TIMES HIGHER THAN IT WOULD HAVE OTHERWISE
16 BEEN UNDER THE MORE STANDARD METHOD.

17 THE ROUSES EXAMPLE, WE FEAR, WILL
18 LIKELY BECOME THE NORM FOR FUTURE PROJECTS
19 THROUGHOUT THE REGION. UNDER THE PROPOSED
20 RULE, CONSTRUCTION, MAINTENANCE, AND
21 RESTORATION ACTIVITIES THAT HERETOFORE
22 HAVE NOT REQUIRED A FEDERAL PERMIT WOULD
23 BE SUBJECT TO THE CLEAN WATER ACT.

24 WE ARE PARTICULARLY SENSITIVE TO
25 THIS ISSUE IN SOUTHEAST LOUISIANA DUE TO

1 OUR FLAT TERRAIN AND OUR LOCATION IN THE
2 MISSISSIPPI RIVER BASIN. IN LIGHT OF OUR
3 TYPOGRAPHY, OUR DRAINAGE SYSTEMS MUST
4 FUNCTION UNDER GRAVITY THROUGH THE USE OF
5 MAN-IMPROVED ROADSIDE DITCHES, CANALS, AND
6 BAYOUS.

7 BECAUSE OF OUR FLAT SLOPE -- AND
8 WE ARE FAR FROM THE ONLY AREA IN THE
9 UNITED STATES WITH FLAT TERRAIN -- WE
10 PROVIDE CONSTANT AND FREQUENT MAINTENANCE
11 TO OUR DRAINAGE-WAYS.

12 THE PROPOSED RULE WOULD EXPAND
13 THE COURT'S JURISDICTIONAL AUTHORITY OVER
14 ROUTINE MAINTENANCE OF ROADSIDE DITCHES
15 AND CANALS. THE NEGATIVE CONSEQUENCES
16 WOULD BE WIDE RANGING, BUT SPECIFICALLY
17 FOR FOUR REASONS.

18 FIRST, MANY DEVELOPMENT PROJECTS
19 WOULD BECOME COST PROBABTIVE. THE ROUSES
20 PROJECT IS A RECENT EXAMPLE, AND THAT IS
21 WITHOUT THIS PROPOSED RULE EVEN HAVING
22 TAKEN EFFECT.

23 SECOND, THE PROCESS TO OBTAIN A
24 PERMIT WOULD BECOME SO PROLONGED THAT MANY
25 PROJECTS WILL NEVER GET OFF THE GROUND.

1 IT CURRENTLY TAKES, ON AVERAGE, TWELVE
2 MONTHS TO OBTAIN A PERMIT FOR WATER THAT
3 IS REGULATED. DEVELOPERS AND MUNICIPAL
4 GOVERNMENTS COULD BE STANDING IN LINE FOR
5 TWO TO THREE YEARS, PERHAPS LONGER, IF THE
6 COURT HAS JURISDICTIONAL AUTHORITY OVER AN
7 EXPANDED SET OF WATERS.

8 THIRD, IT WOULD PLACE A
9 SIGNIFICANTLY INCREASED BURDEN ON THE
10 MUNICIPALITIES THAT ARE REQUIRED TO
11 MAINTAIN AND IMPROVE THE DRAINAGE SYSTEM
12 ON A CONSISTENT BASIS.

13 FINALLY, THERE WILL BE SO MANY
14 MORE WATERS THAT BECOME REGULATED THAT THE
15 BACKLOG IN THE CORPS PERMITTING OFFICES
16 WILL INCREASE TENFOLD. DEVELOPMENT AND
17 REGULAR ONGOING MAINTENANCE COULD COME TO
18 A SCREECHING HALT.

19 SENATOR AND CONGRESSMAN, THE
20 PROPOSED RULE DOES NOT ADD NEW PROTECTIONS
21 FOR OUR WATERS -- FOR OUR NATION'S WATER
22 RESOURCES. IT SHIFTS THE JURISDICTIONAL
23 AUTHORITY OVER MANY NEW WATERS TO FEDERAL
24 AGENCIES.

25 WE LOOK FORWARD TO WORKING WITH

1 YOU AND THE COMMITTEE AS YOU SEEK CLARITY
2 AND CERTAINTY IN THIS CRITICAL AREA.

3 THANK YOU AGAIN FOR YOUR PERSONAL
4 LEADERSHIP ON THIS ISSUE.

5 SENATOR VITTER:

6 THANK YOU VERY MUCH.

7 AND WE'LL OPEN IT UP WITH
8 QUESTIONS AND DISCUSSION BY MY TURNING TO
9 DR. CASSIDY.

10 CONGRESSMAN CASSIDY:

11 GENTLEMEN, EACH OF YOU KNOW MORE
12 ABOUT THIS TOPIC THAN I, SO IF SOME OF MY
13 QUESTIONS SEEM ONE-ON-ONE, I APOLOGIZE.

14 BUT, MR. SERIO, YOU JUST RAISED
15 SOMETHING. A FELLOW TOLD ME LAST WEEK HE
16 HAD A DITCH NEAR HIS PROPERTY WHICH HAD
17 BECOME OVERGROWN. NOW, IT WAS NOT REALLY
18 DRAINING THAT WELL, AND HE TOOK OUT THINGS
19 THAT YOU AND I WOULD CONSIDER TRASH TREES,
20 BECAUSE IT WAS OCCLUDING FLOW.

21 BUT WHAT YOU JUST SAID SUGGESTS
22 THAT REALLY UNDER THIS LAW HE WOULD
23 REQUIRE A PERMIT TO DO ROUTINE MAINTENANCE
24 WHEN HE JUST HAS TRASH TREES GROWING UP IN
25 HIS DITCH. FAIR STATEMENT?

1 MR. SERIO:

2 I THINK THAT'S A FAIR STATEMENT.
3 THIS IS THE FIRST TIME THAT THE WORD
4 "DITCHES" HAS APPEARED IN ANY OF THE
5 REGULATIONS.

6 BEFORE THIS TIME, DITCHES WERE
7 NOT SUBJECT TO THAT PURVIEW. SO I THINK
8 UNDER THE EXPANDED SET, I THINK THEY WOULD
9 HAVE TO GO TO THE CORPS BEFORE THEY CAN DO
10 ANYTHING THAT YOU WOULD DEEM SIMPLE, AS
11 CLEARING TRASH OR VEGETATION. I THINK
12 THEY WOULD HAVE TO GO AND SEEK A PERMIT.

13 CONGRESSMAN CASSIDY:

14 I'LL INSTRUCT YOU -- AND AGAIN,
15 AND YOUR TESTIMONIES SPEAK OF HOW THE FLAT
16 TOPOGRAPHY OF LOUISIANA POSES PARTICULAR
17 CHALLENGES.

18 WHENEVER I GO DOWN TO LAFOURCHE
19 AND TERREBONNE, OR EVEN THROUGH ORLEANS
20 AND JEFFERSON, I SOMETIMES NOTICE THAT THE
21 WATER LEVEL SEEMS REMARKABLY HIGH RELATIVE
22 TO THE LAND.

23 SO DO YOU HAVE ANY SENSE OF HOW
24 BIG A PROBLEM THIS POTENTIALLY COULD BE
25 FOR MUNICIPALITIES AND CITIES IN OUR KIND

1 OF ALMOST DELTA-LIKE --

2 MR. SERIO:

3 MUNICIPALITIES ARE ALREADY
4 STRAPPED FOR CASH. I DON'T THINK THERE'S
5 ANY QUESTION THAT HAVING TO SPEND MORE
6 COST AND RESOURCES -- THEY ALREADY HAVE TO
7 COMPLY WITH MS4 AND SECTION 402. THIS IS
8 AN EXTRA SET OF REGULATIONS FOR THEM.

9 SO I DON'T THINK THERE'S ANY
10 QUESTION THAT THEIR COST WOULD INCREASE,
11 AND THAT ULTIMATELY WOULD FILTER DOWN TO
12 TAXPAYERS.

13 IN FACT, A COUPLE MONTHS AGO AT
14 THE U.S. CONFERENCE OF MAYORS, IN JUNE,
15 THE MAYORS NATIONALLY -- SO IT'S NOT ONLY
16 A CONCERN FOR US, BUT NATIONALLY, THE
17 MAYORS PASSED A RESOLUTION THAT
18 HIGHLIGHTED TEN CONCERNS WITH THIS
19 PROPOSED RULE, AND IF I FIND MY -- HERE'S
20 THE RESOLUTION. I'LL JUST REFERENCE SOME
21 OF THE THINGS THAT THEY MENTIONED.

22 THE RULE INCLUDES THE FOLLOWING
23 PROVISIONS THAT ARE PRIORITY CONCERNS FOR
24 LOCAL GOVERNMENTS: "DITCHES AND OTHER
25 DRAINAGE FEATURES SHALL NOT BE CONSIDERED

1 WATERS OF THE U.S. WASTEWATER TREATMENT
2 SHALL NOT BE CONSIDERED WATERS OF THE
3 U.S."

4 AND THEY GO ON TO SAY THAT THE
5 FAILURE TO ADDRESS ANY OF THESE CONCERNS
6 SHALL BE CONSIDERED AN UNFUNDED MANDATE
7 AND THAT THE FEDERAL GOVERNMENT SHALL
8 PROVIDE FUNDING TO LOCAL GOVERNMENTS TO
9 ADDRESS THE COST OF IMPLEMENTATION.

10 CONGRESSMAN CASSIDY:

11 SO IF YOU WILL, THEY'RE NOT
12 COMFORTABLE WITH THE EPA DEFINING THE TERM
13 AND HOPING THAT IT DOES NOT INCLUDE THEM.
14 RATHER, THEY WOULD WANT SOMETHING
15 SPECIFIC, SUCH AS THE FARMERS SPEAK OF,
16 404, AS BEING A SPECIFIC EXCLUSION OF
17 THESE ISSUES?

18 MR. SERIO:

19 CORRECT.

20 CONGRESSMAN CASSIDY:

21 MR. VANDERSTEEN -- BUCK, I KNOW
22 YOU, MAN, SO I'M GOING TO CALL YOU BY
23 FIRST NAME.

24 MR. VANDERSTEEN:

25 THANK YOU.

1 CONGRESSMAN CASSIDY:

2 LISTEN, YOU SPEAK OF 404'S
3 EXEMPTION FOR SILVICULTURE, BUT THAT
4 THERE'S ONLY 56 -- UNDER THE NEW
5 REGULATIONS, POTENTIALLY THERE WILL BE A
6 CARVE OUT OF SOME, BUT NOT OF OTHERS.

7 NOW, AGAIN, I CAUGHT THAT, BUT I
8 DON'T ENTIRELY UNDERSTAND IT. CAN YOU
9 ELABORATE, PLEASE?

10 MR. VANDERSTEEN:

11 WE REALLY DON'T UNDERSTAND IT
12 EITHER, BUT FOR 40 YEARS NORMAL FORESTRY
13 ACTIVITIES HAVE BEEN EXEMPT FROM
14 PERMITTING UNDER THE CLEAN WATER ACT.
15 THAT AFFORDS THE LANDOWNER TO GO OUT AND
16 DO NORMAL FORESTRY MANAGEMENT USING
17 LOUISIANA'S RECOMMENDED BEST MANAGEMENT
18 PRACTICES, AND THAT WORKS FINE.

19 THE FACTS ARE 96 PERCENT OF
20 LANDOWNERS AND LOGGERS ARE USING BEST
21 MANAGEMENT PRACTICES --

22 CONGRESSMAN CASSIDY:

23 NOW, IF YOU HAVE A LARGE DRAINAGE
24 CANAL THROUGH THE MIDDLE, ARE THEY ALLOWED
25 TO MAINTAIN THAT CURRENTLY WITHOUT -- YOU

1 KNOW, IF DEBRIS BUILDS UP, TO CLEAR THAT
2 DEBRIS?

3 MR. VANDERSTEEN:

4 UNDER OUR BEST MANAGEMENT
5 PRACTICES, IF IT IS A RUNNING STREAM, WE
6 HAVE BUFFER ZONES THAT KEEP MATERIAL OUT
7 OF THAT RUNNING STREAM.

8 WHERE IT GETS HAZY IS IN
9 INTERMITTENT -- MEANING IT RUNS PART OF
10 THE YEAR AND NOT OTHER PARTS -- OR WHAT
11 THEY CALL EPHEMERAL, WHICH THE ONLY TIME
12 WATER IS IN IT IS IN A RAIN EVENT.

13 THOSE STREAMS, INTERMITTENT AND
14 EPHEMERAL, OUR GUIDELINES ARE REALLY USING
15 A PROFESSIONAL FORESTER OUT THERE TO SAY,
16 "WHAT DO WE NEED TO DO TO MAKE SURE THAT
17 WATER QUALITY HERE IS PROTECTED?"

18 BUT I WANT TO GET TO THE POINT OF
19 WHAT I SAID ON THE INTERPRETIVE 56. THIS
20 IS BRAND-NEW, AND EPA IS GOING TO THE
21 PARTNERS IN CONSERVATION, THE NATURAL
22 RESOURCES CONSERVATION SERVICE, THAT IN
23 THE FARM BILL HAS ALL OF THESE NEW
24 OPPORTUNITIES TO HELP LANDOWNERS WITH
25 CONSERVATION EFFORTS TO IMPROVE THE WATER

1 QUALITY THAT RUNS THROUGH OUR FORESTS AND
2 FARMS AND OTHER AREAS.

3 AND EPA SAYS THAT THEY WILL BE
4 RESPONSIBLE FOR 56 -- INTERPRETIVE RULE --
5 THAT WILL BE NORMAL FORESTRY AND
6 AGRICULTURAL ACTIVITIES -- ONLY 56. DOES
7 THAT MEAN THAT IF IT DOESN'T FIT IN THE 56
8 BUT IT HAS BEEN COMMON PRACTICE, THAT THAT
9 MIGHT REQUIRE A CLEAN WATER ACT PERMIT?

10 FIRST TIME EVER IN 40 YEARS THAT
11 EPA HAS SAID THESE 56 TO BE ADMINISTERED
12 BY AN AGENCY WHO HAS NOT BEEN IN A
13 REGULATORY ENVIRONMENT, BUT HAS BEEN IN A
14 PARTICIPATORY -- HELPING LANDOWNERS AND
15 OTHERS DO CONSERVATION EFFORTS -- NOW WILL
16 BE RESPONSIBLE FOR DECIDING, IS THIS A
17 NORMAL ACTIVITY OR NOT.

18 CONGRESSMAN CASSIDY:

19 SO, COMMISSIONER STRAIN, IN
20 CONTEXT, YOU MENTION THAT THERE'S BEEN
21 DRAMATIC IMPROVEMENT IN RUNOFF AND,
22 ET CETERA.

23 DR. STRAIN:

24 YES.

25 CONGRESSMAN CASSIDY:

1 SO THE FACT THAT THEY WOULD BE
2 EXPANDING THEIR AUTHORITY WHEN WE ARE ON
3 THIS KIND OF TREND TOWARDS IMPROVEMENT
4 SEEMS A LITTLE COUNTERINTUITIVE. WOULD
5 YOU AGREE WITH THAT?

6 DR. STRAIN:

7 I'D AGREE WITH THAT. AND
8 SPECIFICALLY, WHEN YOU LOOK AT WHERE WE'RE
9 AT TODAY, THE NEXT QUESTION IS WHERE WE'RE
10 GOING TO BE AT IN TEN YEARS. AND I WILL
11 REFER BACK TO MY STATEMENT THAT IN THE
12 UNITED STATES WE MUST TRIPLE THE CURRENT
13 AGRICULTURAL PRODUCTION BY 2050 TO MEET
14 THE NEEDS OF THE WORLD.

15 WE'RE TALKING ABOUT NOW --
16 OPENLY, ABOUT GOING TO 600-BUSHEL CORN.
17 THIS YEAR'S AVERAGE IS 167. WHEN YOU LOOK
18 AT THE SCIENCE, THE TECHNOLOGY
19 AVAILABILITY, WE HAVE TO INCREASE
20 PRODUCTION NOW.

21 CONGRESSMAN CASSIDY:

22 BUT CAN I JUST -- JUST CATCH YOU
23 ON THAT.

24 I PRESUME THAT MEANS YOU WILL BE
25 USING MORE FERTILIZER, AND YET DESPITE

1 USING MORE FERTILIZER, WE HAVE LESS
2 RUNOFF. IS THAT --

3 DR. STRAIN:

4 THAT IS CORRECT. WELL, ACTUALLY,
5 BUT NOT SIGNIFICANTLY MORE IN THE SENSE
6 THAT ON THAT 600-BUSHEL CORN, THE IDEA IS
7 THAT WE'RE GOING TO ADAPT NEW SCIENCE AND
8 NEW TECHNOLOGY THAT ON A PER-BUSHEL BASIS
9 WE'RE USING LESS CORN, LESS FERTILIZER,
10 AND SIGNIFICANTLY LESS WATER.

11 WE'RE DOING SUCH THINGS AS
12 TAILWATER RECOVERY AND ALL THESE THINGS,
13 BECAUSE FOR A FARMER ANYTHING THAT LEAVES
14 THAT FARM COSTS THE FARMER, RIGHT? THOSE
15 ARE INPUTS THAT NEED TO BE CONSERVED AND
16 BETTER UTILIZED.

17 THERE IS A LIMITATION, AS YOU
18 QUITE WELL KNOW NOW, IN THE UNITED STATES
19 ON THE AVAILABILITY OF WATER AND OF LAND.
20 SO WE'RE GOING TO BE DOING THIS ON LESS
21 LAND -- LESS LAND. WE LOSE AN AVERAGE IN
22 LOUISIANA OF ABOUT 24,000 ACRES OF
23 FARMLAND PER YEAR, NOT COUNTING WHAT'S
24 GOING ON WITH MITIGATION. THAT'S A
25 SEPARATE DISTINCT ISSUE.

1 BUT WHEN YOU LOOK AT THAT, THESE
2 ARE THE 56 ACCEPTED PRACTICES OF THE NRCS.
3 WHAT ABOUT ACCEPTED PRACTICES OF
4 CONSERVATION THAT ARE BEING DEVELOPED THAT
5 ARE NOT FEDERAL NRCS? WHAT ABOUT THE NEW
6 TECHNOLOGIES THAT ARE TOMORROW?

7 SO THE OTHER PART IS OUR
8 FARMERS -- YOU KNOW, OUR AVERAGE FARM --
9 OUR AVERAGE FARM IN LOUISIANA IS ONLY
10 ABOUT 297 ACRES, RIGHT? THEY DON'T HAVE
11 AN ENVIRONMENTAL ENGINEER ON STAFF, NOR DO
12 THEY HAVE A FIRM THAT WILL BE ABLE TO
13 APPLY AND HELP PAY FOR A 404 PERMIT.

14 THE WHOLE IDEA IS THAT WE MUST
15 MOVE AND ADAPT RAPIDLY, BUT BEST
16 MANAGEMENT; MASTER FARMERS, MASTER
17 LOGGERS, RIGHT?

18 WHEN YOU'RE TALKING ABOUT THE
19 VALUE OF AGRICULTURE IN BUSINESS TERMS, IT
20 IS HUGE, BUT WE CAN'T BE RESTRAINED AND
21 SAY, "LOOK, WE CAN ONLY DO THESE
22 PRACTICES, BECAUSE IF YOU'RE GOING TO DO
23 THIS, YOU'RE GOING TO HAVE TO GET A 404
24 PERMIT, BECAUSE NOW A FEDERAL EXPANSION,
25 WAY BEYOND WHAT IT WAS INTENDED."

1 YOU KNOW, WHEN YOU'RE TALKING
2 ABOUT THE ISSUES OF SOVEREIGNTY OF THE
3 STATE, RIGHT, AND A MARKED EXPANSION OF
4 THE ORIGINAL INTENT OF THE CLEAN WATER
5 ACT, AND WHEN YOU PUT ALL THIS TOGETHER,
6 IF THIS IS NOT DONE PROPERLY, IF THIS
7 PROCEEDS AS IT IS, YOU COULD HAVE A MARKED
8 COOLING ON THE RATE OF ADVANCE OF ECONOMIC
9 DEVELOPMENT SPECIFICALLY IN AGRICULTURE.

10 AND THE OTHER --

11 CONGRESSMAN CASSIDY:

12 YOU WRITE IT IN STONE, AND ALL OF
13 A SUDDEN INNOVATION DIES.

14 DR. STRAIN:

15 YES.

16 CONGRESSMAN CASSIDY:

17 SENATOR VITTER?

18 SENATOR VITTER:

19 THANKS.

20 I WANT TO BACK UP A LITTLE BIT
21 AND GO FIRST TO WHAT I CONSIDER THE BASIC
22 ISSUE, WHICH IS THE LACK OF LEGAL
23 AUTHORITY FOR THIS.

24 CLEAN WATER ACT WAS PASSED INTO
25 LAW IN 1972, CORRECT?

1 MR. VANDERSTEEN:

2 YES, SIR.

3 SENATOR VITTER:

4 AND IN THE FEW YEARS AFTER THAT
5 THE NORMAL RULE-MAKING PROCESS TOOK PLACE,
6 AND THERE WERE RULES AND REGS DEVELOPED
7 REGARDING IMPLEMENTATION; IS THAT CORRECT?

8 MR. VANDERSTEEN:

9 YES, SIR.

10 SENATOR VITTER:

11 AND THROUGH ALL OF THAT, THE JUMP
12 TO OVERSIMPLIFY THE GENERAL DEFINITION OF
13 JURISDICTION WAS "NAVIGABLE WATERS"; IS
14 THAT CORRECT?

15 MR. VANDERSTEEN:

16 YES.

17 SENATOR VITTER:

18 NOW, IT SEEMS TO ME IT'S BEYOND
19 DISPUTE THAT THIS REWRITE, THIS REGULATORY
20 REWRITE, IS SIGNIFICANT AND MAJOR. YOU
21 CAN THINK IT'S A GREAT IDEA. YOU CAN
22 THINK IT'S A BAD IDEA. YOU CAN THINK IT
23 INCREASES UNCERTAINTY. YOU CAN THINK IT
24 REDUCES UNCERTAINTY. BUT IT IS A
25 SIGNIFICANT AND MAJOR REWRITE OF THE REGS,

1 IS IT NOT?

2 MR. VANDERSTEEN:

3 IT IS.

4 SENATOR VITTER:

5 SO MY FIRST QUESTION TO GO TO
6 THAT FIRST CONCERN I HAVE IS, WHAT ACT OF
7 CONGRESS HAPPENED TO SET THIS IN MOTION?
8 WHAT ACT OF CONGRESS ARE THE REGULATORY
9 AGENCIES RESPONDING TO?

10 MR. VANDERSTEEN:

11 SENATOR, LET ME --

12 SENATOR VITTER:

13 IS THERE --

14 MR. VANDERSTEEN:

15 LET ME TRY THAT. WHAT I'VE BEEN
16 ABLE TO DETERMINE, THERE WERE TWO CASES,
17 ONE IN 2001 AND 2006. ONE WAS CALLED THE
18 SWANCC CASE, AND THE OTHER WAS CALLED THE
19 RAPANOS CASE. IT WENT ALL THE WAY TO THE
20 SUPREME COURT, AND THE SUPREME COURT SAID
21 THAT THESE WERE OUTSIDE THE PURVIEW OF THE
22 CLEAN WATER ACT BECAUSE THEY HAD NO NEXUS
23 OR CONNECTIVITY TO NAVIGABLE WATERS.

24 BUT THE SUPREME COURT CHALLENGED
25 EPA, "IF YOU DON'T LIKE OUR DECISION, COME

1 UP WITH NEW REGULATORY GUIDELINES."

2 SO IT SEEMS LIKE THIS WHOLE
3 EFFORT IS ON TWO LEGAL CHALLENGES, CITIZEN
4 LAWSUITS. THE SWANCC CASE DEALT WITH
5 MIGRATORY BIRDS THAT LANDED IN A POND WITH
6 NO CONNECTIVITY TO A NAVIGABLE WATER, AND
7 EPA SAYING, WELL, BECAUSE IT IS MIGRATORY
8 BIRDS THAT EPA CAN REGULATE THAT WATER
9 THAT THOSE BIRDS LANDED ON.

10 SENATOR VITTER:

11 WELL, AGAIN, MY MAIN POINT IS
12 NONE OF THAT INVOLVED CONGRESS, NONE OF
13 THAT INVOLVED NEW STATUTORY LANGUAGE, NONE
14 OF THAT INVOLVED ANY REAL CHANGE IN THE
15 LAW. SO THIS IS BASICALLY EPA WAKING UP
16 ONE DAY AND SAYING, "WE WANT MORE
17 JURISDICTION."

18 THERE IS NO STATUTORY CHANGE,
19 WHICH IS WHERE IT'S SUPPOSED TO START, AND
20 MY GENERAL POINT IS THIS IS THE NORM THESE
21 DAYS. FOLKS WHO WANT TO CHANGE THE LAW IN
22 A WAY THAT THEY CAN'T POSSIBLY GET THROUGH
23 CONGRESS, THEY JUST DO IT THIS WAY.

24 AND WE'RE SEEING THIS -- THIS IS
25 A VERY SERIOUS EXAMPLE, BUT UNFORTUNATELY,

1 WE'RE SEEING THIS ACROSS THE BOARD. I
2 THINK IT IS A SERIOUS ISSUE AMOUNTING
3 REALLY TO A CONSTITUTIONAL CRISIS IN TERMS
4 OF EXECUTIVE OVERREACH.

5 MR. VANDERSTEEN:

6 IT SHOWS NOTHING OF WHAT HAS BEEN
7 ACCOMPLISHED WITH OUR STATE PARTNERS AND
8 THE DEPARTMENT OF ENVIRONMENTAL QUALITY,
9 AGRICULTURE AND FORESTRY, NATURAL
10 RESOURCE, CONSERVATION, CONSERVATION
11 PROGRAMS.

12 THERE'S NO RECOGNITION FOR ALL
13 THE GOOD THAT IS HAPPENING. THEY'RE
14 TAKING TWO ISOLATED EXAMPLES AND SAYING,
15 "THIS IS THE REASON THAT JURISDICTION MUST
16 BE EXPANDED."

17 SENATOR VITTER:

18 THIS AGRICULTURE AND SILVICULTURE
19 EXEMPTION WE'VE TALKED ABOUT, THAT IS
20 STATUTORY, CORRECT?

21 DR. STRAIN:

22 YES.

23 SENATOR VITTER:

24 AND AS I READ IT -- AND I HAVE IT
25 IN FRONT OF ME -- IT IS BROAD STATUTORY

1 LANGUAGE, CORRECT?

2 MR. VANDERSTEEN:

3 (NODS HEAD.)

4 SENATOR VITTER:

5 CAN ALL NORMAL FARMING AND
6 SILVICULTURE AND RANCHING ACTIVITIES --
7 THAT'S THE LANGUAGE -- NORMAL, AG,
8 SILVICULTURE, RANCHING, NORMAL
9 ACTIVITIES --

10 MR. VANDERSTEEN:

11 YES.

12 SENATOR VITTER:

13 -- DO YOU THINK THAT UNIVERSE OF
14 NORMAL ACTIVITIES CAN BE LISTED IN 56
15 LINES, BUCK?

16 MR. VANDERSTEEN:

17 NO, SIR. AND I WILL BE EMPHATIC
18 ABOUT THAT. NEW TECHNOLOGY IS COMING
19 ALONG ALL THE TIME. EVERY PIECE OF
20 PROPERTY IS LIKE EACH OF US. WE'RE ALL A
21 LITTLE DIFFERENT. COMMISSIONER IS HEIGHT
22 CHALLENGED, AND I'M WEIGHT CHALLENGED,
23 SO --

24 DR. STRAIN:

25 THERE YOU GO. YOU'RE DOING WELL

1 THERE, BUDDY.

2 MR. VANDERSTEEN:

3 SO WE'RE ALL DIFFERENT, AND WHAT
4 IS BEST MANAGEMENT PRACTICES THAT'S TAKING
5 CARE OF THE ENVIRONMENT REALLY DEPENDS ON
6 THAT EDUCATION, THOSE MASTER FARMER/MASTER
7 LOGGER PROGRAMS THAT WE'RE DOING TO
8 PROTECT THE --

9 SENATOR VITTER:

10 COMMISSIONER, LET ME ASK YOU THE
11 SAME QUESTION. ALL NORMAL FARMING,
12 RANCHING, TREE GROWING ACTIVITIES, CAN
13 THAT BE PROPERLY SUMMARIZED IN 56 LINES?

14 DR. STRAIN:

15 AS DEFINED BY WHO, IS THE
16 QUESTION BACK.

17 SENATOR VITTER:

18 WELL, I'M SAYING --

19 DR. STRAIN:

20 AND SO --

21 SENATOR VITTER:

22 -- THE REALITY OF THAT
23 UNIVERSE --

24 DR. STRAIN:

25 NO, SIR.

1 SENATOR VITTER:

2 -- CAN IT BE LIMITED TO 56 LINES?

3 DR. STRAIN:

4 NO, SIR, IT CANNOT. I MEAN,
5 THERE ARE -- WHAT WE DO HERE IN LOUISIANA
6 IS MARKEDLY DIFFERENT FROM WHAT IS DONE IN
7 COLORADO OR WHAT IS DONE IN THE VIRGINIAS.

8 AGRICULTURE IS UNIQUE TO THE
9 ENVIRONMENT BY WHICH YOU LIVE, AND WHAT WE
10 CONSIDER NORMAL -- AND TO PUT IT IN
11 PERSPECTIVE, A FEW YEARS AGO WE PASSED
12 RIGHT-TO-FARM LEGISLATION IN LOUISIANA.
13 YOU SAW WHAT JUST HAPPENED IN MISSOURI.

14 IT PASSED BY ONE-TENTH OF A
15 PERCENT OF A VOTE, WHAT -- THE RIGHT TO
16 FARM BY WHAT IS NORMAL FARMING PRACTICES,
17 AND THEN WHEN YOU HAVE THE ABILITY OF
18 CITIZEN SUITS TO CHALLENGE NORMAL FARMING
19 PRACTICES. AND WHAT IS NORMAL TODAY --
20 WHAT IS NORMAL TODAY WILL BE OLD SCIENCE
21 TOMORROW. WE MUST ADVANCE RAPIDLY AND
22 REDEFINE NORMAL FARMING PRACTICES.

23 AND SO -- AND WHEN YOU LOOK AT
24 THIS, THE ORIGINAL JURISDICTION OF THE
25 CLEAN WATER ACT WAS UNDER BODIES OF WATER

1 THAT WERE CLEARLY IN THE INTEREST OF THE
2 FEDERAL GOVERNMENT. THOSE WOULD BE UNITED
3 STATES NAVIGABLE BODIES OF WATER. THAT'S
4 CLEAR. BUT ONCE YOU GET OUTSIDE, THOSE
5 ARE ISSUES OF THE STATE.

6 SENATOR VITTER:

7 NOW, ALL OF Y'ALL HAVE ALSO
8 TALKED ABOUT TIMING AND THE TIME IT TAKES
9 FOR SOME OF THIS PROCESS OF PERMITTING TO
10 HAPPEN. I THINK THAT'S VERY SIGNIFICANT
11 TOO.

12 AND LET'S TALK ABOUT TWO
13 ACTIVITIES WHICH IT SEEMS MAY NOW, UNDER
14 THIS PROPOSED RULE, REQUIRE PERMITTING,
15 WHICH THEY HAVE NOT BEFORE: CLEARING OUT
16 DITCHES AND APPLYING FERTILIZER.

17 IS IT FAIR TO SAY THAT THOSE TWO
18 ACTIVITIES MAY NOW REQUIRE PERMITTING,
19 WHERE THEY HAVE NOT BEFORE?

20 MR. SERIO:

21 SENATOR, I DON'T THINK THERE'S
22 ANY QUESTION. DITCHES HAVE NEVER APPEARED
23 IN THE LANGUAGE BEFORE. THEY'RE CLEARLY
24 IN THE PROPOSED RULE. SO I DO THINK
25 DITCHES WOULD GET PICKED UP.

1 DITCHES ARE ALREADY REGULATED BY
2 MS4, UNDER A SEPARATE PART OF THE ACT. SO
3 THIS IS AN ADDITIONAL LAYER OF REGULATION
4 THAT PRIOR TO THIS RULE WOULD NOT HAVE
5 COME INTO PLAY.

6 SENATOR VITTER:

7 BOTH THAT ACTIVITY -- CLEARING
8 OUT DITCHES, APPLYING FERTILIZER --
9 HAPPENED REGULARLY, ANNUALLY OR MORE
10 REGULARLY, CORRECT?

11 IS IT YOUR EXPERIENCE THAT A
12 NORMAL FEDERAL PERMITTING PROCESS CAN KEEP
13 UP WITH THAT? I MEAN, A NORMAL CORPS
14 PERMIT, IN YOUR PRACTICE, HOW LONG DOES
15 THAT TAKE?

16 MR. SERIO:

17 TWELVE MONTHS, AVERAGE.

18 SENATOR VITTER:

19 OKAY.

20 MR. SERIO:

21 THIS KIND OF GOES TO YOUR
22 QUESTION, BUT JUST THE SHEER VOLUME OF
23 WATERS THAT WILL NOW COME INTO PLAY; THE
24 EPA IS BASICALLY SAYING ALMOST EVERY
25 WATER'S IN PLAY.

1 I DON'T KNOW HOW THE PERMITTING
2 OFFICES ARE GOING TO BE ABLE TO HANDLE
3 THAT IN AN EFFICIENT MANNER. IN A LOT OF
4 OUR VIEWS, NOW THEY'RE NOT HANDLING IT
5 EFFICIENTLY. WHAT'S GOING TO HAPPEN WHEN
6 YOU LUMP IN TEN TIMES THE NUMBER OF WATERS
7 THAT HAVE TO BE PERMITTED?

8 SENATOR VITTER:

9 SO FIRST OF ALL, IT WILL
10 DRAMATICALLY EXPAND THE PERMIT
11 APPLICATIONS; AND SECONDLY, IT WILL
12 INVOLVE A LOT OF ACTIVITY THAT IS SUPPOSED
13 TO HAPPEN MORE REGULARLY THAN THEIR
14 PERMIT -- EVEN THEIR PERMIT TIME FRAME,
15 RIGHT?

16 MR. SERIO:

17 RIGHT.

18 SENATOR VITTER:

19 DO Y'ALL HAVE ANY REACTION ON
20 THAT?

21 DR. STRAIN:

22 SENATOR VITTER, IF YOU REMEMBER,
23 A NUMBER OF YEARS AGO WE WERE AT A MEETING
24 IN ALEXANDRIA, IN RAPIDES PARISH. WE MET
25 AT THE BANK. AND THE ISSUE WAS, IS THAT

1 THE CORPS OF ENGINEERS WAS REQUIRING A
2 CORPS STUDY, AND AN AUDITOR AUTHORIZED THE
3 OPENING UP OF A MAN-MADE CANAL THAT WOULD
4 INCREASE THE WATER FLOW INTO THE RED FOR
5 THE PURPOSES OF IRRIGATION.

6 ALSO, THAT WOULD COST SEVERAL
7 HUNDRED THOUSAND DOLLARS AND TAKE ONE OR
8 TWO YEARS TO DO IN ORDER TO INCREASE THE
9 FLOW FOR IRRIGATION DOWN THE RIVER IN A
10 MAN-MADE CANAL BUILT BY THE CORPS OF
11 ENGINEERS, BUT IT WOULD BE PAID FOR BY THE
12 STATE.

13 AND YOU REMEMBER OUR FRUSTRATION
14 AT DEALING WITH THAT PARTICULAR ISSUE. IT
15 WAS A PUBLIC DITCH CANAL; THAT THE FARMERS
16 SAID, "LOOK, WE CAN GO OUT THERE WITH
17 TRACK HOES AND CLEAR IT IN A WEEK, AND IT
18 WON'T COST ANYTHING."

19 AND SO WHEN YOU START LOOKING AT
20 WHAT THE POTENTIAL FOR THIS IS -- AND LOOK
21 AT THE RICE INDUSTRY. THE MAJORITY OF THE
22 RICE INDUSTRY, WE BUY WATER. WE BUY WATER
23 FROM WATER COMPANIES THAT COMES DOWN
24 CANALS.

25 AND EVENTUALLY THAT WATER, ONCE

1 IT IS USED AND MADE CLEANER BY THE RICE
2 INDUSTRY, FLOWS. IT FLOWS INTO THE
3 MERMENAU BASIN, IT FLOWS -- AND
4 EVENTUALLY, IT DOES FLOW TO THE GULF.

5 SO NOW WE'RE GOING TO HAVE TO --
6 AS WE EXPAND RICE OR WE GROW RICE IN A
7 DIFFERENT PLACE, SO IF WE USE LAND THAT
8 WAS IN SOYBEANS AND CONVERT IT TO RICE,
9 IT'S DIFFERENT. IT'S A CHANGE. WE HAVE
10 TO PUT A CANAL TO IT FOR WATER. WE'RE
11 GOING TO HAVE TO TRY TO GET A 404 PERMIT.
12 THE FARMERS, UNLESS YOU'RE A VERY LARGE
13 FARM, THAT'S NOT GOING TO HAPPEN; AND THEN
14 THE COST.

15 THERE'S AN EXCELLENT REPORT THAT
16 SAYS "ECONOMIC ANALYSIS OF PROPOSED
17 DEFINITIONS -- REVISED DEFINITION OF
18 WATERS OF THE UNITED STATES," AND THIS IS
19 BY THE -- IT WAS PUT OUT MARCH 2014. IT
20 TALKS ABOUT THE COST, AND IT IS
21 SIGNIFICANT.

22 MR. VANDERSTEEN:

23 SENATOR, IN 2010, A CITIZEN
24 LAWSUIT CHALLENGED WHETHER A LOGGING
25 OPERATION, WHERE THE LOGGING OPERATION

1 BUILT A SET, THAT THAT WAS ACTUALLY A
2 POINT SOURCE DISCHARGE INSTEAD OF A NORMAL
3 FORESTRY ACTIVITY.

4 AFTER MULTIMILLIONS OF DOLLARS,
5 IT EVENTUALLY WENT TO THE U.S. SUPREME
6 COURT, AND IN 2013 THE SUPREME COURT SAID
7 THAT IT IS A NORMAL FORESTRY ACTIVITY.

8 AND YOU DO REMEMBER, I HOPE --
9 AND CONGRESSMAN CASSIDY AS WELL -- THAT WE
10 PASSED THE REGULATORY -- YOU PASSED THE
11 REGULATORY CONSISTENCY ACT OF 2014 THAT
12 SAID THAT NORMAL FORESTRY ACTIVITIES
13 INCLUDED A LOGGING SET WHERE THE SOIL IS
14 EXPOSED, BUT THAT'S WHERE THEY'RE
15 ACCUMULATING THE LOGS AND THEN LOADING THE
16 LOGS ON A TRUCK AND SENDING THEM OUT TO
17 THE -- OUT TO MARKET.

18 NORMAL FORESTRY ACTIVITY, BUT YET
19 EVEN THEN WAS CHALLENGED IN THE COURTS;
20 AND THE PEOPLE, THE LANDOWNERS, HAD TO
21 COME UP WITH MILLIONS OF DOLLARS THAT THEY
22 DID TO TAKE THAT ALL THE WAY TO THE U.S.
23 SUPREME COURT. I WISH THEY TOOK IT TO
24 THIS COURT HERE, WHERE YOU'RE SITTING, BUT
25 WOUND UP TAKING IT TO THE U.S. SUPREME

1 COURT.

2 AND FORTUNATELY, WE WON THAT
3 CASE, BUT EVEN WITH THE BROAD DEFINITION,
4 WE STILL HAVE THIS UNCERTAINTY OF THESE
5 CITIZENS LAWSUITS.

6 SENATOR VITTER:

7 RIGHT.

8 DR. CASSIDY?

9 CONGRESSMAN CASSIDY:

10 YEAH, MR. SERIO, IT'S KIND OF --
11 AGAIN, I'M NOT AN ATTORNEY, BUT IF I'M
12 JUST AN AVERAGE PERSON WHO'S GOT SOME
13 PROPERTY, MAYBE 20 ACRES, WHAT WOULD --
14 AND THE EPA COMES AFTER ME -- WHAT'S IT
15 GOING TO COST ME TO FIGHT THEM, BALLPARK?
16 BECAUSE IT ALMOST SEEMS LIKE THEY CAN COW
17 YOU JUST BY THREATENING THE LAWSUIT UNLESS
18 YOU'VE GOT REALLY DEEP POCKETS.

19 MR. SERIO:

20 LITIGATION IN THAT TYPE OF
21 SITUATION, COUPLE HUNDRED THOUSAND DOLLARS
22 IN LEGAL FEES.

23 CONGRESSMAN CASSIDY:

24 SO \$200,000 FOR A FAMILY WHO'S
25 GOT 20 ACRES AND A HOME ON IT AND THEY

1 WANT TO DO SOMETHING, AND BOOM, THAT'S
2 THE -- I GUESS THAT'S YOUR FIRST ANTE? I
3 MEAN, I PRESUME IT COULD GO MORE THAN
4 200K.

5 BECAUSE YOU JUST MENTIONED
6 MILLIONS, BUCK.

7 MR. SERIO:

8 PROBABLY DEPENDS ON THE FIRM, BUT
9 IT'S SIGNIFICANT; AND IT'S SOMETHING THAT,
10 IN YOUR EXAMPLE, THAT PERSON SHOULD NOT
11 HAVE TO ENDURE.

12 THERE'S ACTUALLY A CASE IN THE
13 FIFTH CIRCUIT THAT JUST CAME OUT TWO WEEKS
14 AGO, AND BASICALLY RULED -- A PRIVATE
15 LANDOWNER WENT TO THE CORPS AND FOUND OUT
16 THAT THEY HAD WETLANDS OR WATER ON THEIR
17 PROPERTY THAT WAS DEEMED TO BE
18 JURISDICTIONAL. THEY SUED IN FEDERAL
19 COURT, AND THE COURT DECIDED THAT --

20 CONGRESSMAN CASSIDY:

21 WHO SUED?

22 MR. SERIO:

23 THE LANDOWNER -- AND THE COURT
24 DECIDED THAT FEDERAL COURT DID NOT HAVE
25 JUDICIAL REVIEW POWER OVER A

1 JURISDICTIONAL DETERMINATION.

2 CONGRESSMAN CASSIDY:

3 REALLY?

4 MR. SERIO:

5 (NODS HEAD.)

6 CONGRESSMAN CASSIDY:

7 SO THEY SUED, THEY LOST, AND NOW
8 THEIR USE OF PROPERTY HAS BEEN EFFECTIVELY
9 CONFISCATED?

10 MR. SERIO:

11 CORRECT.

12 CONGRESSMAN CASSIDY:

13 NOW, I'M ALSO -- AGAIN, I'M NOT
14 AN ATTORNEY, BUT I'VE NOTICED THAT
15 WHENEVER THERE'S A NEW REGULATORY REGIME I
16 HAVE A STACK OF PAPERS IN MY OFFICE IN DC
17 RELATED TO THE AFFORDABLE CARE ACT, SO
18 CALLED, AND THE STACK IS NOW LIKE 13 FEET
19 HIGH. WE'VE ACTUALLY BRACED IT IN TWO
20 PLACES BECAUSE OSHA TOLD US IT MAY TOPPLE.

21 SO I'M ASSUMING THAT IN THAT
22 DISRUPTIVE PROCESS, THAT'S WHEN THE
23 RULE-MAKING OCCURS, AND THAT'S WHY EVEN IF
24 YOU'RE THAT LANDOWNER, YOU'RE STILL GOING
25 TO HIRE MR. SERIO -- YOU'RE WELCOME TO

1 TELL US YOUR RATES IF THEY'RE PRETTY
2 REASONABLE --

3 MR. SERIO:

4 RIGHT.

5 CONGRESSMAN CASSIDY:

6 -- IF ONLY BECAUSE IT'S NOW A NEW
7 REGULATORY REGIME.

8 BUT WHEN THESE TWO GENTLEMEN SAY
9 THAT UNDER CURRENT LAW IT'S FAIRLY WELL
10 ESTABLISHED --

11 MR. SERIO:

12 RIGHT.

13 CONGRESSMAN CASSIDY:

14 -- IF YOU WILL, THAT IS A SAFE
15 HAVEN.

16 MR. SERIO:

17 IT IS.

18 I THINK FROM OUR PERSPECTIVE, THE
19 RETAIL REAL ESTATE INDUSTRY, DEVELOPERS,
20 RETAILERS, THEY WANT CLARITY. THEY WANT
21 TO KNOW WHAT THEIR RISKS ARE AND THEY'RE
22 MANAGEABLE.

23 I THINK RIGHT NOW A DEVELOPER
24 WOULD TELL YOU 12 MONTHS IS TOO LONG TO
25 WAIT FOR A PERMIT, BUT AT LEAST THEY KNOW

1 THAT'S THE TIME THAT THEY NEED TO WAIT,
2 AND AT LEAST THEY KNOW AT THIS POINT IT
3 MIGHT COST 100- TO 200,000 TO GET A
4 PERMIT.

5 UNDER THIS NEW REGIME, HOW LONG
6 WILL IT COST? WHAT IS THE BACKLOG GOING
7 TO BE IN THE PERMITTING OFFICES? THOSE
8 RISKS ARE UNMANAGEABLE, AND NOT ONLY WILL
9 STALL GOOD PROJECTS; I THINK IT WILL
10 OUTRIGHT KILL GOOD PROJECTS, JUST BECAUSE
11 RETAILERS AND DEVELOPERS CAN'T WAIT TWO TO
12 THREE YEARS FOR A PERMIT.

13 CONGRESSMAN CASSIDY:

14 AND SINCE MUCH OF AT LEAST SOUTH
15 LOUISIANA IS WET, SO TO SPEAK, IT WOULD BE
16 A PARTICULAR ISSUE FOR SOUTH LOUISIANA.

17 MR. SERIO:

18 ABSOLUTELY.

19 CONGRESSMAN CASSIDY:

20 NOT THAT NORTH LOUISIANA DOESN'T
21 HAVE THEIR ISSUES; I KNOW THAT FROM
22 FIGHTING FROM THE FLOOD INSURANCE RELIEF.

23 NOW, COMMISSIONER?

24 DR. STRAIN:

25 YES.

1 CONGRESSMAN CASSIDY:

2 I'M A LITTLE CONFUSED. YOU'VE
3 BROUGHT UP TWICE RICE FARMERS, AND YET THE
4 DEFINITION THAT SENATOR VITTER MENTIONED
5 EXPLICITLY EXCLUDES NORMAL FARMING
6 PRACTICES.

7 DR. STRAIN:

8 YES.

9 CONGRESSMAN CASSIDY:

10 SO IT SEEMS LIKE RICE FARMERS
11 WOULD BE IMMUNE IF -- FROM DIFFERENT A
12 REGULATORY STATE. BECAUSE THEY'VE BEEN
13 DOING THIS FOREVER, IT'S OBVIOUSLY THEIR
14 NORMAL PATTERN. ARE YOU SAYING THAT'S NOT
15 THE CASE?

16 DR. STRAIN:

17 RICE FARMERS ARE CONCERNED,
18 SPECIFICALLY, WHEN YOU LOOK AT THE ISSUES
19 OF WHEN YOU DRAIN THE FARM FOR RICE, THEN
20 YOU REFLOOD THE FARM FOR WILDLIFE. ALSO,
21 WHEN UNDER THE PARTICULAR SYSTEM THAT WE
22 HAVE, THEY FEEL THAT THEY WILL BE UNDER A
23 MARKED INCREASED JURISDICTION.

24 RICE FARMERS USE A LOT OF WATER;
25 AND THE QUESTION IS, IS THAT WHEN THAT

1 WATER NOW LEAVES THE RICE FARM AND THEN IT
2 GOES INTO A DRAINAGE CANAL SYSTEM, AND IF
3 THAT CANAL SYSTEM EVENTUALLY DRAINS INTO A
4 SIGNIFICANT NEXUS, IT IS NOW GOING TO BE
5 REGULATED WHEN THEY START LOOKING AT --
6 EVEN IF THE WATER'S CLEANER THAN WHEN IT
7 WENT INTO THE RICE FARM --

8 CONGRESSMAN CASSIDY:

9 BUT HANG ON. THEORETICALLY, IF
10 THAT IS A NORMAL FARMING PRACTICE, THAT
11 WOULD BE ONE OF THOSE 56 LINES
12 CURRENTLY --

13 DR. STRAIN:

14 THAT'S NATIONAL RESOURCE
15 CONSERVATION PRACTICE; NOT NECESSARILY,
16 QUOTE, WHO IS GOING TO DEFINE A NORMAL
17 FARMING PRACTICE. THOSE ARE TWO DIFFERENT
18 THINGS.

19 THE 56 PRACTICES ARE CONSERVATION
20 PRACTICES BY THE NRCS, NATIONAL RESOURCE
21 CONSERVATION SERVICE, THAT ARE PARTNERS --
22 VOLUNTARY PARTNERS -- WHERE THE FARMERS
23 WORK WITH THEM FOR SALTWATER CONSERVATION.
24 THAT IS SALTWATER CONSERVATION PRACTICES.

25 NORMAL FARMING PRACTICES HAS TO

1 DO WITH THE APPLICATION -- WHEN YOU APPLY
2 YOUR FERTILIZER, WHEN YOU APPLY WHAT
3 PESTICIDES, WHAT PESTICIDES --

4 CONGRESSMAN CASSIDY:

5 SO EVEN THOUGH --

6 DR. STRAIN:

7 -- DO YOU USE.

8 CONGRESSMAN CASSIDY:

9 -- THIS HAS BEEN THEIR NORMAL
10 PRACTICE, IT'S NOT GOING TO BE NECESSARILY
11 SECURE FROM EPA COMING IN AND TIGHTENING
12 THE GRIP.

13 DR. STRAIN:

14 AND ALSO, IN ORDER TO STAY AHEAD
15 OF THE CURVE, NORMAL FARMING PRACTICES
16 MUST CHANGE AT LIGHT SPEED. SO WHAT IS
17 NORMAL AND ACCEPTED TODAY MAY NOT BE
18 NORMAL AND ACCEPTED --

19 CONGRESSMAN CASSIDY:

20 TOTALLY GET THAT.

21 DR. STRAIN:

22 -- TOMORROW.

23 CONGRESSMAN CASSIDY:

24 TOTALLY GET THAT. ONCE IT'S
25 WRITTEN IN FEDERAL RULE, IT BECOMES

1 WRITTEN IN CONCRETE, AND IMPROVEMENTS ARE
2 DIFFICULT TO IMPLEMENT.

3 IN FACT, THAT BRINGS ME TO MY
4 QUESTION. YOU MENTIONED -- AND I WASN'T
5 QUITE SURE I FOLLOWED THIS, SO YOU MAY
6 JUST BE CLARIFYING MY MISUNDERSTANDING --
7 THE DELAY IN GETTING THE TOTAL MAXIMAL
8 DAILY LOAD --

9 MR. VANDERSTEEN:

10 TMDLS.

11 CONGRESSMAN CASSIDY:

12 -- REGULATION.

13 NOW, YOU SUGGESTED THAT WE'VE
14 BEEN WAITING FOR THAT REGULATION?

15 DR. STRAIN:

16 NO, SIR. AND IF YOU LOOK AT WHAT
17 HAPPENED IN OTHER STATES, IF YOU START OFF
18 WITH THE CHESAPEAKE BAY, WHERE NOW IN THE
19 STATES SURROUNDING THE CHESAPEAKE BAY
20 THERE'S NOW MARKED RESTRICTIONS, FOR
21 INSTANCE, ON THE UTILIZATION OF TYPES OF
22 FERTILIZER.

23 FOR INSTANCE, SCOTTS AND COMPANY
24 CANNOT INCORPORATE ANY PHOSPHOROUS IN
25 THEIR FERTILIZERS UPSTREAM OF THE

1 CHESAPEAKE BAY, AND SO THERE ARE NOW
2 RESTRICTIONS ON THE USE OF TYPE OF
3 FERTILIZERS THAT CAN BE USED IN NORMAL
4 AGRICULTURAL PRACTICES AS TO WHAT THE
5 FEDERAL GOVERNMENT SAYS ARE THE TOTAL
6 MAXIMUM DAILY LOADS ALLOWABLE IN A BODY OF
7 WATER OF A SPECIFIC SUBSTANCE THAT GOES
8 INTO A JURISDICTIONAL WATERWAY.

9 NOW --

10 CONGRESSMAN CASSIDY:

11 NOW, A FARM'S NOT A POINT SOURCE,
12 BUT NONETHELESS --

13 DR. STRAIN:

14 NON-POINT SOURCE, THAT'S CORRECT.

15 SO UNDER TMDLS, IF YOU THINK
16 ABOUT A WATERWAY IN COLORADO, IT'S CLEAR,
17 HIGHLY OXYGENATED, BABBLING BROOK.

18 NOW, I WANT YOU TO THINK ABOUT
19 THE WATERS THAT ARE NECESSARY TO GO INTO
20 THE ATCHAFALAYA OR THE WATERS THAT ARE
21 NECESSARY TO COME DOWN THE MISSISSIPPI
22 RIVER THAT HAVE NUTRIENTS AND DIFFERENT
23 LEVELS OF DISSOLVED OXYGEN. WE'RE VERY
24 DIFFERENT IN OUR ECOSYSTEMS.

25 ALSO, WHEN THERE IS TESTING FOR

1 THESE DIFFERENT NUTRIENT LEVELS --
2 OXYGENATION, ORGANIC COUNTS, NITROGEN,
3 PHOSPHORUS -- THAT IS GENERALLY DONE AT
4 VERY LIMITED TIMES OF THE YEAR.

5 AND OUR UNIQUE ECOSYSTEM, WHAT WE
6 ARE SAYING IS THAT BASED ON SOUND SCIENCE,
7 THAT THESE TMDLS SHOULD BE ESTABLISHED,
8 NOT A NUMERIC NUMBER, BUT IN SUCH A
9 FASHION THAT THOSE TMDLS SUPPORT THE
10 ECOSYSTEM IN WHICH THEY ARE FOUND; AND
11 THAT SHOULD BE A STATE'S JURISDICTION, NOT
12 ARTIFICIALLY SET BY THE FEDERAL
13 GOVERNMENT.

14 THE FEDERAL GOVERNMENT COMES IN
15 AND SAYS, "FROM THIS POINT ON, IN THIS
16 BODY OF WATER, WE SAY YOU CAN ONLY HAVE
17 THIS LEVEL OF NITROGEN, THIS LEVEL OF
18 OXYGEN, YOU HAVE TO HAVE THIS LEVEL OF
19 PHOSPHORUS, OR THIS TURBIDITY."

20 WELL, THAT'S -- YOU KNOW,
21 EISENHOWER SAID, "AGRICULTURE IS VERY EASY
22 IF YOU'RE 1,000 MILES AWAY, AND YOU'RE
23 FARMING, INSTEAD OF A PLOW, YOU HAVE A
24 PENCIL." RIGHT?

25 SO WHEN YOU THINK ABOUT IT, THIS

1 NEEDS TO BE REMAINED WITHIN THE STATES'
2 JURISDICTION, AND THAT WE DETERMINE WHAT
3 IS A BEST MANAGEMENT PRACTICE AND WHAT IS
4 ACCEPTABLE IN A BODY OF WATER.

5 SOME OF THE MOST POLLUTED LAKES
6 FOR E. COLI IN LOUISIANA HAVE NO
7 AGRICULTURE. THEY HAVE DUCKS. SO WHEN
8 YOU START THINKING ABOUT THE ISSUES THAT
9 WE FACE, AND IF THE FEDERAL GOVERNMENT,
10 THROUGH THE EPA, HAS THE AUTHORITY TO SET
11 A NUMBER, A NUMERIC LIMIT ON A TMDL FOR A
12 SPECIFIC NUTRIENT -- NITROGEN, PHOSPHORUS,
13 DISSOLVED OXYGEN, OR ANY TYPE OF
14 PESTICIDES -- THEN ACCORDING TO THE LSU AG
15 CENTER, IT COULD COST OUR FARMERS -- AND
16 THIS IS IN LAST YEAR'S NUMBERS -- OVER
17 \$350 MILLION --

18 CONGRESSMAN CASSIDY:

19 ASK ONE MORE QUESTION --

20 DR. STRAIN:

21 -- SO IF THEY TELL YOU THAT --
22 FOR INSTANCE, YOU HAVE YOUR CORNFIELDS,
23 RIGHT? AND THEY SAY, "WELL, YOU KNOW
24 WHAT, YOU CAN ONLY PUT 75 POUNDS OF
25 NITROGEN; YOU CAN'T USE 150."

1 WELL, YOU CAN'T BRING THAT CROP
2 IN AT A PROFIT, RIGHT? JUST BECAUSE OF
3 WHAT MAY BE, UNDER THEIR DETERMINATION,
4 THAT IN A BODY OF WATER THAT IS NOW A
5 SIGNIFICANT NEXUS TO YOUR FARM, DRAINING
6 FROM YOUR DITCH, THAT THEY SAY, "WE DO NOT
7 AGREE THAT THIS LEVEL -- WE THINK THIS IS
8 TOO HIGH"; AND THEREFORE, IN AGRICULTURE,
9 YOU CAN'T USE THIS FERTILIZER OR YOU CAN'T
10 CUT YOUR TREES OR YOU CAN'T FERTILIZE YOUR
11 TREES.

12 AND IF YOU LOOK AT SOME OF THE
13 LEVELS THAT ARE -- FOR INSTANCE, OZONE
14 ATTAINMENT, YOU GET OUT IN YELLOWSTONE
15 NATIONAL PARK, YOU CANNOT ATTAIN THE OZONE
16 ATTAINMENT THEY SAY THEY NEED FOR THE
17 AREA.

18 SO THERE ARE SOME SIGNIFICANT
19 ISSUES WITH THAT.

20 SENATOR VITTER:

21 OKAY. I'LL WRAP UP WITH A FINAL
22 SET OF QUESTIONS.

23 MR. VANDERSTEEN, EPA CLAIMS THAT
24 THEY'RE PUSHING THIS RULE TO FOSTER
25 GREATER REGULATORY CERTAINTY.

1 WHAT'S YOUR REACTION TO THAT IN
2 GENERAL, AND IN PARTICULAR, TO THAT CLAIM,
3 WHEN PART OF THIS PROPOSAL IS TO EXPAND
4 JURISDICTION TO ANY BODY OF WATER WITH A,
5 QUOTE, NEXUS -- SUBSTANTIAL NEXUS, CLOSED
6 QUOTE, TO NAVIGABLE WATERBODIES?

7 IS THAT A PRECISE, CERTAIN TERM
8 IN YOUR MIND? DO YOU KNOW EXACTLY WHERE
9 THAT'S LEADING IN ANY GIVEN SITUATION?

10 MR. VANDERSTEEN:

11 SENATOR, I HAVE NO IDEA THAT EPA
12 AND THE CORPS WOULD THINK THAT THIS WOULD
13 GIVE CERTAINTY TO FOREST LANDOWNERS. I
14 JUST -- IT'S FLABBERGASTING THAT SOMETHING
15 AS BROAD AS WHAT THEY'RE PROPOSING,
16 SOMETHING THAT GIVES THE IMPRESSION THAT
17 THERE ARE ONLY A FEW NORMAL FORESTRY
18 ACTIVITIES TO AN AGENCY THAT HAS BEEN
19 PARTNERING WITH US IN A COOPERATIVE,
20 CONSERVATION EFFORT THAT NOW WILL BE THE
21 REGULATORY BODY TO DECIDE WHAT IS NORMAL
22 ACTIVITY COULD BE ANYTHING CERTAIN TO HELP
23 FOREST LANDOWNERS AND PEOPLE IN
24 AGRICULTURE DO WHAT THEY'RE SUPPOSED TO DO
25 TO PROTECT THE ENVIRONMENT WHILE PRODUCING

1 A CROP.

2 THAT STATEMENT IS, TO ME, SO
3 FALSE AND SO FILLED WITH HOLES THAT IT
4 WILL NOT HOLD WATER.

5 SENATOR VITTER:

6 AND, MR. SERIO, I WANT TO GO BACK
7 TO THIS WHOLE PERMITTING PROCESS. THIS
8 WOULD CLEARLY LEAD TO AN AVALANCHE OF NEW
9 PERMIT APPLICATIONS REQUIRED. IF YOU HAD
10 TO GUESSTIMATE, AT THE LOCAL LOUISIANA
11 CORPS OFFICES, WHAT SORT OF PERCENTAGE
12 INCREASE COULD BE INVOLVED IN TERMS OF
13 PERMIT APPLICATIONS?

14 MR. SERIO:

15 I HAVE NO IDEA. THERE'S SO MUCH
16 WATER IN OUR AREA, AND BASIC -- AND I KIND
17 OF -- I'LL TAKE THE CONTRARIAN POINT OF
18 VIEW ON WHETHER THEY'RE BEING CLEAR IN
19 THIS PROPOSED -- YOU COULD TAKE THE POINT
20 OF VIEW THAT THEY ARE BEING CLEAR BY
21 SAYING EVERYTHING IS WATER.

22 THAT'S NOT THE RIGHT SOLUTION, IN
23 MY MIND.

24 SENATOR VITTER:

25 RIGHT.

1 MR. SERIO:

2 BUT I HAVE NO IDEA WHAT THE
3 PERCENTAGE INCREASE WOULD BE, BUT IT WOULD
4 BE SIGNIFICANT, PARTICULARLY IN OUR AREA.

5 AND THEIR ATTEMPT TO DEFINE --
6 FURTHER DEFINE, IN THE RULE-MAKING
7 PROCESS, REALLY CUTS AGAINST THE GRAIN OF
8 WHAT THE SUPREME COURT'S ASKING THEM TO
9 DO.

10 YOU MENTIONED THE TEST,
11 "SIGNIFICANT NEXUS." THE TITLE OF THE
12 EPA'S REPORT UPON WHICH THIS RULE-MAKING
13 IS BASED IS "CONNECTIVITY OF STREAMS AND
14 WETLANDS TO DOWNSTREAM WATERS."

15 THEY NEED TO GET A REPORT THAT
16 SAYS "SIGNIFICANT CONNECTIVITY OF STREAMS
17 AND WETLANDS TO DOWNSTREAM WATERS,"
18 BECAUSE THE TEST FOR THE SUPREME COURT IS
19 NOT WHETHER WATER HAS SOME CONNECTION TO A
20 FEDERAL NAVIGABLE WATER. IT HAS TO HAVE A
21 SIGNIFICANT NEXUS.

22 SENATOR VITTER:

23 RIGHT. LET ME ALSO GO BACK TO
24 THIS PERMIT LOG JAM QUESTION.

25 AS YOU KNOW, IN SOUTHEAST

1 LOUISIANA IN THE LAST FEW YEARS, THE LOCAL
2 CORPS DISTRICT'S ADOPTION OF THE MODIFIED
3 CHARLESTON METHOD HAS BEEN A BIG
4 INHIBITING FACTOR FOR A LOT OF PROJECTS.

5 IF THIS WENT FORWARD AS IS, THIS
6 PROPOSED RULE, HOW WOULD YOU COMPARE THAT
7 TO THE SPEED BUMPS AND THE ISSUES WE'VE
8 HAD WITH THE MODIFIED CHARLESTON METHOD?
9 COULD IT BE EVEN MUCH MORE SIGNIFICANT?

10 MR. SERIO:

11 I THINK THE MODIFIED CHARLESTON
12 METHOD COULD HAVE A REAL CRIPPLING EFFECT.

13 THAT ONE DEAL THAT I REFERENCED
14 IN INTRODUCTION, THE ROUSES DEAL OUT ON
15 HIGHWAY 59 AND I-12, THAT WAS THE FIRST
16 DEAL THAT I HAD COME ACROSS WHERE THE
17 DEVELOPER COULD NOT COMPLETE THE DEAL
18 BECAUSE OF THE EXORBITANT COSTS, AND IN MY
19 EXPERIENCE THAT WAS THE FIRST TIME THAT
20 METHOD HAD BEEN APPLIED IN ONE OF MY
21 DEALS. THAT WAS IN 2012.

22 BUT THE COST TO MITIGATE WENT --
23 THE RATIO WENT FROM 1.3-TO-1 TO 4-TO-1 IN
24 TERMS OF THE AMOUNT OF WETLANDS THAT
25 NEEDED TO BE MITIGATED, WHICH QUADRUPLLED

1 THE COST OF THE PROJECT AND RENDERED IT
2 ECONOMICALLY UNVIABLE.

3 SO THAT METHOD ALONE WILL CRIPPLE
4 QUITE A BIT OF PROJECTS.

5 SENATOR VITTER:

6 AND I GUESS WHAT I'M ASKING IS,
7 COMPARED TO WHAT YOU'VE SEEN SO FAR WITH
8 THAT, WHAT COULD BE THE IMPACTS OF THIS
9 PROPOSED RULE IF IT WENT FORWARD?

10 MR. SERIO:

11 WELL, I THINK THE DEVELOPERS
12 WOULD GET IT ON BOTH ENDS, NOT ONLY WITH
13 THE CALCULATION OF THE AMOUNT OF WETLANDS
14 THAT NEED TO BE MITIGATED, BUT ALSO WITH
15 THE ADDITIONAL RED TAPE, DELAYS, COSTS
16 THAT WOULD INCREASE PROJECTS. THAT WOULD
17 DERAIL PROJECTS, IN MY VIEW.

18 SENATOR VITTER:

19 AND, COMMISSIONER STRAIN, I KNOW
20 YOU'VE PARTICIPATED IN SOME FORUMS IN
21 LOUISIANA WHERE EPA HAS COME IN
22 SPECIFICALLY TO TALK ABOUT THIS AND AG.
23 WHAT'S THAT DISCUSSION BEEN LIKE, AND
24 BOTTOM LINE, HAVE THEY ALLAYED YOUR AND
25 OTHER AG SECTOR FOLKS' CONCERNS?

1 DR. STRAIN:

2 THANK YOU, SENATOR VITTER.

3 SPECIFICALLY, WE HAD MORE THAN
4 250 FARMERS PARTICIPATE. WE DID A NORTH
5 LOUISIANA AND A SOUTH LOUISIANA. AND
6 ALMOST TO A PERSON, THEY'RE AGAINST THIS
7 RULE.

8 FIRST OF ALL, THEY SAID, "IF IT
9 DOES NOT AFFECT AGRICULTURE, WHY ARE WE
10 HERE, WHY IS THE EPA HERE, AND WHY DO YOU
11 WANT TO HEAR FROM US IF WE'RE NOT
12 AFFECTED?"

13 ALSO, WHEN WE TALK ABOUT WHERE
14 AGRICULTURE IS AND WHERE WE ARE GOING,
15 THERE'S A GREATER DEGREE OF UNCERTAINTY
16 NOW BECAUSE IT DOES NOT -- IT PUTS IN
17 FURTHER REGULATIONS THAT WILL BE LATER
18 DEFINED THAT CAN HAVE AN INHIBITORY EFFECT
19 ON THE ABILITY TO MOVE FORWARD IN
20 PRODUCTION AND CONSERVATION.

21 SO THE FARMERS ARE VERY
22 DISTRUSTFUL. THEY DO NOT FEEL -- THEY DO
23 NOT -- THEY DID NOT FEEL THAT WE WERE
24 THERE IN THEIR BEST INTEREST, AND THEY'RE
25 VERY CONCERNED ABOUT WHAT WE DO NOT KNOW,

1 AND THEY'RE ALSO EXTREMELY CONCERNED ABOUT
2 THE GROWTH IN FEDERAL JURISDICTION;
3 BECAUSE IT IS NOT ONLY FOR THE LANDS THEY
4 OWN, IT'S FOR THE LANDS THAT THEY OWE
5 MONEY FOR THAT WHICH THEY WANT TO OWN.

6 AND WHEN YOU PUT THIS TYPE --
7 WHEN YOU PUT -- WHEN THERE'S THIS MUCH
8 UNCERTAINTY, IT CAUSES A GREAT DEAL OF
9 PAUSE, AND THEY ARE CONCERNED. THEY WOULD
10 LIKE THIS RULE WITHDRAWN, TO A PERSON.

11 THEY WERE VERY, VERY WELL READ.
12 THEY UNDERSTOOD IT VERY, VERY WELL. BUT
13 THEY HAD MORE QUESTIONS WHEN THEY LEFT
14 THAN WHEN THEY CAME.

15 SENATOR VITTER:

16 OKAY. THANK YOU ALL VERY, VERY
17 MUCH. THIS HAS BEEN A VERY PRODUCTIVE
18 DISCUSSION, CERTAINLY FROM OUR POINT OF
19 VIEW.

20 AS A FOLLOW-UP TO TODAY, WE'RE
21 GOING TO STAY VERY INVOLVED IN THIS ISSUE.

22 AS I MENTIONED IN MY OPENING
23 STATEMENT, ON THE SENATE SIDE, I'M ALREADY
24 A LEADING COAUTHOR OF S. 2496 BY SENATOR
25 JOHN BARRASSO, THE PROTECTING WATER AND

1 PROPERTY RIGHTS ACT OF 2014. IT WOULD
2 PREVENT THE FINALIZATION OF THIS RULE OR
3 ANY SIMILAR RULE.

4 IF AND WHEN THIS RULE OR A
5 SIMILAR RULE IS FINALIZED, CONGRESS WOULD
6 HAVE THE OPPORTUNITY TO PASS WHAT'S CALLED
7 A MOTION OF DISPROVAL, AND I WOULD LEAD
8 THAT FIGHT AND BE VERY INVOLVED IN THAT AS
9 WELL.

10 LET ME JUST POINT OUT THE BIGGEST
11 PRACTICAL MATTER OF WHETHER ANY OF THAT
12 HAS A CHANCE IS, QUITE FRANKLY, THE
13 LEADERSHIP OF THE SENATE, BECAUSE RIGHT
14 NOW HARRY REID WOULD BLOCK VOTES ON THAT,
15 MUCH LESS PASSING THOSE SORTS OF MEASURES.

16 SO THAT'S THE BIGGEST PRACTICAL
17 MATTER AND ISSUE RIGHT NOW ON THE SENATE
18 SIDE. BUT WE'LL WORK THROUGH ALL OF THAT,
19 AND WE'LL STAY VERY, VERY INVOLVED. ON AN
20 ONGOING BASIS, ENCOURAGE ALL YOU TO KEEP
21 SENDING DR. CASSIDY AND ME AND OTHERS
22 SPECIFIC HELPFUL INFORMATION ON THIS
23 TOPIC.

24 THANK YOU VERY, VERY MUCH. AND
25 WITH THAT, THIS BRIEFING HAS ENDED.

(WHEREUPON, THE BRIEFING WAS CONCLUDED.)

* * *

1 REPORTER'S CERTIFICATE

2
3 THIS CERTIFICATION IS VALID ONLY FOR A
4 TRANSCRIPT ACCOMPANIED BY MY ORIGINAL SIGNATURE
5 AND ORIGINAL REQUIRED SEAL ON THIS PAGE.

6 I, GRETCHEN HALL, CERTIFIED COURT
7 REPORTER IN AND FOR THE STATE OF LOUISIANA,
8 AS THE OFFICER BEFORE WHOM THIS TESTIMONY
9 WAS TAKEN, DO HEREBY CERTIFY THAT THIS
10 TESTIMONY WAS REPORTED BY ME IN THE
11 STENOTYPE REPORTING METHOD, WAS PREPARED AND
12 TRANSCRIBED BY ME OR UNDER MY PERSONAL
13 DIRECTION AND SUPERVISION, AND IS A TRUE AND
14 CORRECT TRANSCRIPT TO THE BEST OF MY ABILITY
15 AND UNDERSTANDING; THAT THE TRANSCRIPT HAS
16 BEEN PREPARED IN COMPLIANCE WITH TRANSCRIPT
17 FORMAT GUIDELINES REQUIRED BY STATUTE OR BY
18 RULES OF THE BOARD, THAT I HAVE ACTED IN
19 COMPLIANCE WITH THE PROHIBITION ON
20 CONTRACTUAL RELATIONSHIPS, AS DEFINED BY
21 LOUISIANA CODE OF CIVIL PROCEDURE ARTICLE
22 1434 AND IN RULES AND ADVISORY OPINIONS OF
23 THE BOARD; THAT I AM NOT RELATED TO COUNSEL
24 OR THE PARTIES HEREIN, NOR AM I OTHERWISE
25 INTERESTED IN THE OUTCOME OF THIS MATTER.

19 GRETCHEN HALL, CCR, RPR
20 CERTIFIED COURT REPORTER
21
22
23
24
25